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Tuesday
July 2, 1996

Briefings on How To Use the Federal Register
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: July 9, 1996 at 9:00 am, and July 23, 1996 at 9:00 am.

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

RESERVATIONS: 202–523–4538

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administration Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends its General Administrative Regulations by revising § 400.168. This amendment is intended to bring § 400.168 into conformance with the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) by clarifying the obligations of the reinsured companies with respect to the sale and service of the catastrophic risk protection (CAT) plan of insurance in those States, or portions of a State, where the Secretary of Agriculture has determined that there are, or are not, sufficient insurance agents and other personnel available to service CAT policyholders.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Account Executive, Risk Management Agency, Insurance Services Division, Reinsurance Services Liaison Branch, United States Department of Agriculture (USDA), Washington, D.C. 20250, telephone (202) 720–2832.

SUPPLEMENTARY INFORMATION: Pursuant to section 161(d) of the 1996 Act, this rule is issued without regard to (1) the notice and comment provisions of section 553 of Title 5, United States Code,

(1) the notice and comment provisions of section 553 of Title 5, United States Code,

(2) the Statement of Policy of the Secretary of Agriculture (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking, and

(3) the Paperwork Reduction Act of 1995, (44 U.S.C., chapter 35) notice and comment requirements.

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

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 (OMB).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA. Executive Order No. 12612.

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, 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.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the burden on the reinsured company because this action merely clarifies the obligations of participating insurance companies in providing for the delivery of catastrophic risk protection policies through approved private insurance providers consistent with the legislative requirement of the 1996 Act to foster a single delivery system. Although this action will require approved insurance providers to accept all eligible applicants for all plans of insurance in all counties within a State (or a portion of State) where it is determined that there is a sufficient number of active agents reasonably accessible to producers, the benefits in terms of greater underwriting capacity for the private sector will outweigh any increased underwriting risks associated with a single delivery system. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provision of Executive Order No. 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.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions

contained in these regulations and the appeal provisions promulgated by the Board of Contract Appeals, 7 CFR part 24, subtitle A, must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

Prior to enactment of the 1996 Act, CAT coverage was offered through approved insurance providers and through local offices of the Farm Service Agency, USDA on a nationwide basis. The 1996 Act amended the Federal Crop Insurance Act to require the USDA to phase in a single delivery of CAT coverage unless the Secretary of Agriculture determines that the number of private insurers in a State (or a portion of a State) is insufficient to provide the coverage. In response to the legislative elimination of the delivery of CAT through county Farm Service Agency offices, except in those areas where there are insufficient approved private insurance providers to provide CAT coverage to producers, FCIC must amend this regulation to update and clarify the obligations of participating insurance companies.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends General Administrative Regulations, 7 CFR part 400, subpart L, effective for the 1997 and succeeding reinsurance years, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Paragraphs (b) and (c) of § 400.168 are revised to read as follows:

§ 400.168 Obligations of participating insurance company.

* * * * *

(b) The Company shall make available to all eligible producers in the areas designated in its plan of operations as approved by the Corporation:

(1) The crop insurance plans for the crops designated in its plan of operation in those counties within a State, or a portion of a State, where the Secretary of Agriculture has determined that insurance is available through local offices of the United States Department of Agriculture; and

(2) Catastrophic risk protection, limited, and additional coverage plans of insurance for all crops, for which such insurance is made available by the Corporation, in all counties within a state, or a portion of State, where the Secretary of Agriculture has determined that insurance is no longer available through local offices of the United States Department of Agriculture.

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage in accordance with subpart U of part 400 and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

* * * * *

Signed in Washington, D.C., on June 26, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–16794 Filed 6–27–96; 12:36 pm]

BILLING CODE 3410–FA–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–268–AD; Amendment 39–9685; AD 96–14–03]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–301,–311, and—315 series airplanes, that currently requires modification of the airspeed limitations placard and revision of the Airplane Flight Manual to specify operating at lower airspeeds when the airplane is operating at full flaps. That action also provides for the optional termination of the requirements of the AD for certain airplanes. That action was prompted by a report that incorrect rivets were installed on the outboard flaps assemblies of these airplanes. The actions specified by that AD are intended to prevent structural failure of the outboard flaps of the wings due to the installation of incorrect rivets in the flap assemblies, which could result in reduced controllability of the airplane. This new amendment requires the installation of the previously optional terminating modification on certain airplanes.

DATES: Effective August 6, 1996.

The incorporation by reference of de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995; and DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995; as listed in the regulations, was approved previously by the Director of the Federal Register as of February 27, 1996 (61 FR 5277, February 12, 1996).

ADDRESSES: Service information referenced in this amendment may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–26–17, amendment 39–9475 (61 FR 5277, February 12, 1996), which is applicable to certain de Havilland Model DHC–8–

301,–311, and–315 series airplanes, was published in the **Federal Register** on April 23, 1996 (61 FR 17855).

For Model DHC–8–301 series airplanes, the action proposed to continue to require modification of the airspeed limitations placard and revision of the airplane flight manual (AFM) to specify operating at lower airspeeds when the airplane is operating at full flaps.

For Model DHC–8–311 and–315 series airplanes, the action proposed to require that the previously optional terminating modification (Modification 8/2066) be installed within two years. Once that modification is installed, the currently-required airspeed limitations placard and AFM revision may be removed. Additionally, the action proposed to require that Modification 8/2066 be installed on certain outboard flap assemblies prior to their installation on these airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 18 de Havilland Model DHC–8–301,–311, and–315 series airplanes of U.S. registry that will be affected by this proposed AD.

The actions that are currently required by AD 95–26–17 (modification of the airspeed limitations placard and revision of the Airplane Flight Manual) affect all 18 U.S.-registered airplanes. Those actions take approximately .5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $540, or $30 per airplane.

The new actions that are required by this new AD (installation of the terminating modification) will affect 14 U.S.-registered Model DHC–8–311 and–315 series airplanes. The required actions will take approximately 60 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $50,400, or $3,600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9475 (61 FR 5277, February 12, 1996), and by adding a new airworthiness directive (AD), amendment 39–9685, to read as follows:

96–14–03 de Havilland, Inc.: Amendment 39–9685. Docket 95–NM–268–AD. Supersedes AD 95–26–17, Amendment 39–9475.

Applicability: Model DHC–8–301, –311, and –315 series airplanes; as listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the outboard flaps of the wings due to the installation of incorrect rivets in the flap assemblies, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after February 27, 1996 (the effective date of AD 95–26–17, amendment 39–9475), accomplish the modification of the airspeed limitation placards (Modification 8/2498) in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

(b) Prior to further flight following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing either paragraph (b)(1) or (b)(2) of this AD, as applicable; and operate the airplane in accordance with those limitations.

(1) For Model DHC–8–301 series airplanes: Include the information specified in DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995, which specifies a lower airspeed limitation et full flaps. This may be accomplished by inserting a copy of Flight Manual Revision 57 into the AFM.

(2) For Model DHC–8–311 and –315 series airplanes: Include the following statement in section 2, paragraph 2.4.1.2., of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Flap extended speed (V_{FE}): Flaps 35 degrees 130 knots IAS"

(c) For Model DHC–8–311 and –315 series airplanes: Within 2 years after the effective date of this AD, install Modification 8/2066 in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995. Such installation constitutes terminating action for the

requirements of paragraphs (a) and (b) of this AD. Following accomplishment of Modification 8/2066, the airspeed limitations placard (Modification 8/2498) required by paragraph (a) of this AD and the AFM limitation required by paragraph (b) of this AD may be removed.

(d) Except as required by paragraph (e) of this AD: As of February 27, 1996 (the effective date of AD 95–26–17, amendment 39–9475), Modification 8/2498 must be accomplished in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, prior to installation of any outboard flap assembly having a part number and serial number that is listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

(e) For Model DHC–8–311 and –315 series airplanes: As of two years after the effective date of this AD, prior to the installation of any outboard flap assembly having a part number and serial number that is listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, install Modification 8/2066 on the affected flap assembly in accordance with that service bulletin. Installation of this modification terminates the requirements specified in paragraphs (a), (b), and (d) of this AD.

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

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

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

(h) The modifications shall be done in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995. The AFM revision may be done in accordance with DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995. The incorporation by reference of these two documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 27, 1996 (61 FR 5277, February 12, 1996). Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 6, 1996.

Issued in Renton, Washington, on June 26, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16807 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0167]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact beverages containing not more than 13 percent alcohol. This action responds to a petition filed by DSM Engineering Plastics.

DATES: Effective July 2, 1996; written objections and requests for a hearing by August 1, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 17, 1993 (58 FR 33447), FDA announced that a petition (FAP 3B4374) had been filed by DSM Engineering Plastics, 501 Crescent Ave., Reading, PA 19512–5051 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petitioner proposed to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 177.1500 should therefore be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 1, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1500 is amended by adding new paragraph (a)(15) and in the table in paragraph (b) by adding new entry "15" to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(15) Nylon 46 resins (CAS Reg. No. 50327–77–0) are manufactured by the condensation of 1,4-butanediamine and adipic acid.

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCL	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
*	*	*	*	*	*		*	*
15. Nylon 46 resins for use only in food-contact membrane filters intended for repeated use. The finished membrane filter is intended to contact beverages containing no more than 13 percent alcohol, under conditions of use E, F, and G listed in table 2 of § 176.170(c) of this chapter.	1.18 ± 0.015	551–592	Dissolves in 1 hour	.....	0.3	0.2	0.2	0.3

* * * * *

Dated: June 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16769 Filed 7–1–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 10

RIN 1076–AD77

Indian Country Detention Facilities and Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is establishing regulations to ensure that all Bureau and tribal entities that receive Federal funding for the operation, maintenance, design and construction, or renovation of detention facilities are operated and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Public Law 101–379 (25 U.S.C. 2801 et seq.). These regulations define the policies, standards and guidelines for detention and rehabilitation programs within Indian country.

EFFECTIVE DATE: These regulations take effect on August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Theodore R. Quasula, 202–208–5786.

SUPPLEMENTARY INFORMATION:

Background

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9. The proposed rule was published August 5, 1994, (59 FR 40086). Comments received during the comment period ending November 3, 1994, were considered in the drafting this final rule.

What is the purpose of this rule? The purpose of this rule is to provide standards and procedures for the operation of detention facilities funded under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Pub. L. 99–570, (25 U.S.C. § 2453).

Who must follow these regulations? Every BIA and tribal law enforcement program receiving Federal funding or performing duties during the operation of detention or rehabilitation facilities or functions must follow these minimum standards. These programs and functions are high risk activities that subject the Federal Government to the risk of liability for tort claims. Self-governance tribes and tribes with limited jurisdiction are encouraged to use this rule, Chapter 69 Bureau of Indian Affairs Manual (BIAM), and handbooks for detention and rehabilitation programs under their administration.

How will these regulations be enforced? All programs will be subject to periodic inspections or evaluations during which the BIA will provide technical assistance, will ensure compliance with the standards and procedures contained in this rule, and will identify necessary corrective actions or improvements to policies and procedures. The Bureau adopted a voluntary accreditation process with an audit and evaluation system.

Why were regulations rewritten and moved? Detention standards were published in 25 CFR § 11.305 and later moved to Section 12.104. The regulations had not been modified for sixteen years. They did not address current detention problems and were inconsistent with current acceptable detention practices and procedures. The regulations also failed to address code compliance and related physical plant issues, and lacked options to allow for alternative types of detention programs. The need for more detailed and contemporary standards was intensified by the provision of funding for detention programs under Indian Alcohol and Substance Abuse Prevention and Treatment Act.

Are all the standards and procedures applicable to adult and juvenile detention facilities, Inmate Handbook

facilities, and holding facilities and programs published in this rule? No. Although Part 10 is reserved entirely for Indian country detention and rehabilitation programs, Chapter 69 BIAM, and handbooks for detention and rehabilitation programs detail the standards and procedures.

How were the rules or regulations revised and updated? A multi-agency task force was assembled to develop the first draft of these standards. The task force included representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists. The task force also included individuals with experience working in tribal detention programs. Additional internal reviews were conducted at the Bureau area and agency level. Interested parties and professionals submitted written comments, suggestions or objections to the proposed rules.

Review of Public Comments

Building and Safety Code Compliance.

The Bureau of Indian Affairs, Facilities Management & Construction Center recommended the standards relating to building and safety code compliance be revised to reflect current requirements. If the facility is owned by the BIA, it must comply with the codes and standards adopted by the BIA in the Chapter 25 Bureau of Indian Affairs Manual (BIAM) Supplements 18 and 19. If the facility is owned by a tribe, it must comply with either tribally adopted building codes, tribally adopted state or municipal building codes, or the Chapter 25 BIAM Supplements 18 and 19. This change has been incorporated into each applicable standard.

Mississippi Band of Choctaw Indians

The Mississippi Band of Choctaw Indians expressed numerous concerns and recommendations. Each of the Tribe's concerns has been addressed:

(1) Development of requirements that are applicable to all facility types. As directed of the Department of the Interior, Office of Regulatory Affairs, the format for the rule must be general in nature. Specific requirements are published in the policy and standards manuals, rather than as rules. The recommendation will not be incorporated in this rule.

(2) Publication of an accreditation process prior to the approval of the final rule. An accreditation process has been drafted. A standards compliance information packet, corrective action plan workbook, self-audit workbook, and standard accreditation workbook have been developed. This process will be field tested and adopted by the BIA.

(3) Reduction of the levels of Bureau approval required for standard compliance—operational descriptions. Standards have been developed for Bureau operated detention/correctional facilities and programs. Through the contracting programs of the Indian Self-Determination and Education Assistance Act, The tribe can develop a facility specific line of authority and approval process of their own when contracting detention/correction programs under the Indian Self-Determination and Education Assistance Act.

(4) Involvement of the Indian Health Service and tribes in the drafting of these standards. The Bureau established a task force to draft these standards. The task force was comprised of representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists and tribes. They provided Indian Health Services and the tribes many opportunities to review the standards, including the publication of the proposed rule in the **Federal Register** on August 5, 1994.

(5) Incorporation of the numbering changes for various tables and charts for Mandatory Standards, Separation of Adults and Juveniles, and Suicide Screening. This has been done.

(6) Modification of accreditation requirements and the minimum qualifications for new recruits. The minimum standards are critical to a quantified accreditation process in order to evaluate compliance and performance. The recommendation will not be incorporated in this rule.

(7) Addition of Detention Officer to the definitions section. The definition section for this rule and the definition has been added.

(8) Provision of funds to train detention staff in the operation of new generation jails. The BIA Indian Police Academy offers detention officer training and is revamping its detention officers' curriculum to incorporate direct supervision methodologies and philosophies.

(9) Incorporation of the rate of facility capacity as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance. The recommendation will not be incorporated in this rule.

(10) Inclusion and/or clarification of the following definitions: (a) Protective Holding Cell—a specialized cell or room that is utilized to detain or isolate an incapacitated or combative individual(s) for a short period of time, in the standards. The protective holding cell may be equipped with specialized security and/or medical equipment to control and manage individuals detained in these areas in a safe, secure, and humane environment. (b) Special Management—confinement of a detainee in an individual cell that is separated from the remainder of the population for the purpose of disciplinary, administrative segregation, protective custody, or medical segregation, in standards. The exceptions to house an inmate in special management must coincide with this criteria. (c) Multiple Occupancy Cells or Rooms—an area, room or cell housing more than two and less than fifty persons. These recommendations were incorporated in the standards or rule.

(11) Addition of Designated Security Post to clarify staffing requirements.

(12) Addition of Adult Holding Facility and Mass Arrest to the definitions for this rule. The Department of the Interior, Office of Regulatory Affairs established the definitions section for this rule. The recommendation will not be incorporated in this rule.

(13) Inclusion of square footage requirements as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance. The recommendation will not be incorporated in this rule.

(14) Addition of a transition program for accepting, moving into, and operating a new facility beginning one year prior to the completion of a facility. The Planning of New Institutions (PONI) is the Bureau's process for constructing and operating new facilities in Indian country. The Bureau has determined that this transition must begin when the construction phase starts. The recommendation will not be incorporated in this rule.

(15) Consolidation of limitations on inmate correspondence and inspection of letters and packages. Upon review, it was decided that no change would be made. The limitations on inmate correspondence addresses the volume of lawful correspondence an inmate may

send or receive. The standard dealing with the inspection of letters and packages addresses the search of inmate mail for contraband. The recommendation will not be incorporated in this rule.

(16) Removal of the requirement that a governing board or advisory committee oversee the operation of a residential facility. The structure of these programs will be the responsibility of the tribe. Oversight of these facilities should include representation from the community and the overall Tribal government. The recommendation will not be incorporated in this rule.

(17) Removal of the designated staff position for recreational and leisure activities, would not be realistic due to the limited staff resources. A position must be specified for accountability purposes, however, the administrator will have the latitude to designate collateral duties where staff is limited. The recommendation will not be incorporated in this rule.

(18) Amendment of Staffing Requirements to Administrative Review of Staff Requirement to include institutional operations dealing with staff requirements. The staffing requirement in the Administration and Management section is an institutional requirement that staff be on board at all times to operate the facility, rather than the administrative process to review staffing patterns within the institution. The recommendation will not be incorporated in this rule.

(19) Inclusion of comparable tribal regulations in the standards. The standards indicate that non-regulatory documents will not be incorporated into the rule. The standards were developed for BIA operated detention/correctional facilities and programs, but permit tribes to operate under comparable tribal regulations when the program is contracted under the Indian Self-Determination and Education Assistance Act. The recommendation will not be incorporated in this rule.

National Commission on Correctional Health Care and the American Psychiatric Association

The recommendation by the National Commission on Correctional Health Care (NCOCHC) and American Psychiatric Association suggested replacing the drafted health care standards developed in association with the Indian Health Service with the NCOCHC's standards for health services in jails. Indian country detention and holding facilities, in general, are smaller than the facilities referenced in NCOCHC standards. The NCOCHC standards are unrealistic for reservation facilities. The Indian Health Service has a legal obligation to provide health services to Indian people and to mandate NCOCHC's standards is duplicative. The Bureau standards are equal to or exceed the American Correctional Association standards. These standards are consistent with national professional standards. The recommendation will not be incorporated in this rule.

Changes Reflecting Department of the Interior Policy

The Office of Regulatory Affairs and the Office of the Solicitor, Department of the Interior, indicated that the proposed rule was predominately standards and procedures for the operation of detention or holding facilities in Indian country; as such they should not be published in the Code of Federal Regulations. This is consistent with Executive Order 12866 that mandates that agencies streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

The Bureau has separated the operational standards and day-to-day guidance from the rulemaking process. The operational standards are now included in easy-to-read reference handbooks and guides. These handbooks and guides are specific to Indian country detention and holding facilities. They are now part of the Bureau's operations management handbook and are available to the public, tribal programs, and BIA employees upon request. Inmates will receive written guidelines at the time of booking into a facility detailing what behavior will be expected of them, their rights and privileges, and the nutritional/medical/emergency treatment to be provided.

Public comments have been incorporated in the "Indian Country Detention Facilities and Programs 69" (Chapter 69 Bureau of Indian Affairs Manual) and accompanying handbooks. The Inmate Handbook ensures that all persons incarcerated in Indian country detention or holding facilities understand their rights, privileges, safety procedures, detainee treatment during incarceration, and the behavior expected of detainees.

Evaluation and Certification

Executive Order 12988

The Department has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.)

Executive Order 12630

The Department has determined that this rule does not have "significant" takings implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary author of this document is Warren LeBeau, Detention Specialist, Bureau of Indian Affairs, Office of Law Enforcement Services.

List of Subjects in 25 CFR Part 10

Buildings, Indians, Law enforcement, Prisoners, Youth.

For the reasons given in the preamble, a new part 10 is added to Chapter I of title 25 of the Code of Federal Regulations as set forth below.

PART 10—INDIAN COUNTRY DETENTION FACILITIES AND PROGRAMS

Sec.

10.1 Why are policies and standards needed for Indian country detention programs?
10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?
10.3 Who must follow these policies and standards?
10.4 What happens if the policies and standards are not followed?
10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?
10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?
10.7 Where do I find help or receive technical assistance in complying with the policies and standards?
10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?
10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?
10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?
10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

§ 10.1 Why are policies and standards needed for Indian country detention programs?

Policies and standards are required to ensure that all Bureau of Indian Affairs (BIA) and tribal entities that receive Federal funding for the operation, maintenance, design and construction or renovation of detention facilities, Inmate Handbook, or holding facilities are supporting constitutional rights and are complying with the Indian Law Enforcement Reform Act of 1990. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. The provision for funding tribes for detention programs under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Public Law 99–570, (25 U.S.C. 2453) requires standards and procedures for such facilities.

§ 10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?

The Director, Office of Law Enforcement Services who reports to the Deputy Commissioner of Indian Affairs, BIA, establishes policies, procedures, and standards for the operations, design, planning, maintenance, renovation, and construction of detention programs in the BIA and by tribal contract under Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended, 25 U.S.C. 450.

§ 10.3 Who must follow these policies and standards?

You must follow these minimum policies, standards, and guides if you are part of the BIA or tribal detention or rehabilitation program receiving Federal funding. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. Detention officers, guards, cooks and other staff conducting business in the facilities must meet minimum standards of law enforcement personnel as prescribed in 25 CFR part 12, subpart D, "Qualifications and Training Requirements." Those tribal programs not receiving Federal funding under the Indian Self-Determination and Education Assistance Act (Public Law 93–638, as amended) who wish to be accredited are encouraged to use the policies and standards in that part since they have been modified and approved for Indian country.

§ 10.4 What happens if the policies and standards are not followed?

The risk for human and civil rights violations due to lack of common standards will subject the operation and/or facility to unnecessary exposure to liability. Lack of employee standards, particularly for training and background checks, will increase the risk of misconduct and vicarious liability of the tribes and the Federal government through tort claims. Funding sources for detention programs may become scarce to nonexistent because of contract noncompliance. The tribes' opportunity to receive funding from potential resource sharing agreements with other law enforcement agencies may be damaged because the facility may have to be closed for cause due to violation of the life safety codes.

§ 10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?

The Bureau of Indian Affairs, Department of the Interior, maintains a manual of policies and procedures called the *Bureau of Indian Affairs Manual (BIAM).* The Chapter 69 BIAM titled "Indian Country Detention Facilities and Programs," contains the BIA's policies, procedures, and standards for detention and holding programs in Indian country. The standards for the programs within the *BIAM* are in handbook format for easy field reference and use. Copies of the Chapter 69 *BIAM* and handbooks may be obtained from the Director, Office of Law Enforcement Services.

§ 10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?

The tribes and BIA programs will use a phased approach to meeting all non-mandatory detention standards and will document progress on uniform reporting. The BIA Office of Law Enforcement Services will conduct periodic operational evaluations for oversight.

§ 10.7 Where do I find help or receive technical assistance in complying with the policies and standards?

The BIA has a trained Detention Specialist on the staff of the Office of Law Enforcement Services, Albuquerque, New Mexico, who is available to conduct evaluations and provide technical assistance or guidance in all facets of Indian country detention programs.

§ 10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?

The Director, Office of Law Enforcement Services, BIA, will develop all necessary requirements for maintaining records, reporting data, and archiving information. These requirements will be published in 69 BIAM, "Indian Country Detention Facilities and Programs."

§ 10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?

When an individual is incarcerated in an Indian country detention, Inmate Handbook, or holding facility, he/she will be given, or in some cases notified of the availability of, an Inmate

Handbook. This book of guidelines describes in detail the inmate's rights, privileges, protection and safety, cleanliness and sanitation, and general health and nutritional standards. The Inmate Handbook describes the emergency evacuation procedures, medical, counseling, rehabilitation services, visitation procedures, and other appropriate information. The Inmate Handbook is published by the Director, Office of Law Enforcement Services and maintained by the detention facility administrator at each facility location.

§ 10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?

All allegations of civil rights violations must be reported immediately to the Internal Affairs Branch of the Office of Law Enforcement Services. This office will ensure that such allegations are immediately reported to the Civil Rights Division of the U.S. Department of Justice through established procedures. The BIA Internal Affairs Branch may also investigate alleged violations and make recommendations for additional action as necessary. Detailed instructions on the procedure to report violations can be found in the Inmate Handbook.

§ 10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

At each detention, Inmate Handbook, or holding facility located in a tribal jurisdiction where federal funds are used for operations or maintenance programs, the BIA's policies, standards, and procedures will be made available upon request. The Inmate Handbook will be made available to all persons at the time they are incarcerated or detained in a facility. There may be times when this may be delayed due to the physical or mental condition of the person at time of incarceration. In these cases, the Inmate Handbook will be made available when the person is deemed receptive and cognizant by the detention officer in charge. All policies, standards, procedures, and guidelines are available at each facility to the public or by writing to the Director, Office of Law Enforcement Services.

Dated: May 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16042 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 96–260]

Future Development of Paging Systems; Implementation of Section 309(J) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order on Reconsideration of Interim Rules.

SUMMARY: In this *Order on Reconsideration* in WT Docket No. 96–18 and PP Docket No. 93–253, the Commission modifies the *First Report and Order* in this docket by expanding the number of licensees that can modify their paging systems by adding sites, due to the paging industry's claims that such relief is necessary to allow paging operators to meet customer needs and improve service to the public while this rulemaking is pending. The Commission will allow applications for additional sites by incumbent licensees who had filed paging applications by October 1, 1995, rather than February 8, 1996, thus expanding the potential number of paging licensees that can expand their systems.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mika Savir or Rhonda Lien, Commercial Wireless Division at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Order on Reconsideration* in WT Docket No. 96–18, PP Docket No. 93–253, adopted June 10, 1996 and released June 11, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington DC., 20037, (202) 857–3800.

Synopsis of Order on Reconsideration of First Report and Order:

I. Background

In the *Notice of Proposed Rulemaking (NPRM)*, 61 FR 06199, February 16, 1996, the Commission suspended acceptance of new paging applications governed by parts 22 and 90 of the Commission's rules in conjunction with a proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis. In the *First Report and Order (First R&O)*, 61 FR 21380, May 10, 1996, the Commission adopted interim measures allowing incumbents on non-nationwide paging channels to apply for new sites to expand existing systems, subject to certain limitations, during the pendency of the rulemaking proceeding. On its own motion, the Commission makes certain modifications to the interim licensing rules established by the *First R&O*, as discussed below.

In the *First R&O*, the Commission allowed incumbents to expand the geographic coverage of their systems by adding transmission sites to their systems within a defined distance of existing, operating sites. Specifically, the *First R&O* provided that applications could be filed for new sites provided that the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an operating site licensed to the same applicant on the same channel prior to the *NPRM*, that is, February 8, 1996. Thus, under the terms of the *First R&O*, incumbents may not use sites licensed after February 8, 1996 as the basis for filing applications for additional expansion sites under the interim rules.

II. Order on Reconsideration

At the time the Commission adopted the *NPRM*, the Wireless Telecommunications Bureau (Bureau) was engaged in reducing a significant backlog of pending paging applications, primarily in the 931 MHz band, many of which had been pending for a year or more. Since the *NPRM* was adopted, the Bureau has significantly reduced the backlog by processing all non-mutually exclusive applications filed through September 30, 1995. In *ex parte* presentations and in comments filed with the Commission, incumbent paging operators have argued that the processing backlog delayed licensing of sites that otherwise would have been granted prior to February 8, 1996. Accordingly, these commenters contend that they should not be precluded from using these newly licensed sites as a basis for expansion.

III. Discussion

The Commission agrees that because of the time it has taken to process certain paging applications, it should allow incumbents to use some sites that were not licensed as of February 8, 1996 as a basis for expansion. Due to the large number of 931 MHz applications filed in the past few years, the Bureau has developed a computer software program to identify and process non-mutually exclusive applications. The Bureau began using the program to process backlogged applications in mid-1995. However, some applications for 931

MHz licenses that were filed as early as January 1995 were still pending on February 8, 1996. The Bureau recently completed its computer run of 931 MHz applications filed between January 1 and September 30, 1995. The results of the run identified about 2,500 applications that were not mutually exclusive and are to be granted, if the applications are otherwise complete, eliminating most of the remaining application backlog. The Commission believes that the recipients of these license grants should be allowed to expand their systems based on these sites, as long as the licensed sites are operational at the time the expansion applications are filed. Therefore, the Commission will allow incumbents to expand 65 kilometers (40 miles) from sites for which applications were filed as of September 30, 1995, whether or not such applications were granted prior to February 8, 1996. This change to the Commission's interim measures will benefit applicants most affected by delays prior to adoption of the *NPRM*.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

As required by Section 604 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the modification of the interim rules set forth in this *Order on Reconsideration*.

Statement of the Need for and Objectives of Interim Rules: In this *Order on Reconsideration*, the Commission is modifying the interim measures, specifically, the interim freeze on new paging applications imposed in the *Notice of Proposed Rulemaking*, to permit incumbent paging licensees to apply for additional licenses to add transmission sites to existing paging systems on the same channel as the existing systems, provided that the additional transmission site is within 65 kilometers (40 miles) from an operating transmission site in the applicant's system. This modification of the interim rule will allow paging companies additional flexibility to expand their systems during the interim period.

Summary of Significant Issues Raised by Comments to the Initial Regulatory Flexibility Analysis (IRFA): There were no comments to the IRFA regarding the interim rules.

All significant alternatives are discussed in the *Order on Reconsideration*.

B. Ordering Clauses

It is ordered that, pursuant to the authority of Sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(c), 309(j), and 332, and effective upon publication of this *Order on Reconsideration* in the **Federal Register**, the interim rules set forth in the *First Report and Order* in this docket are modified as set forth herein.

List of Subjects

47 CFR Part 22

Communications common carriers.

47 CFR Part 90

Common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16874 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 36

[CC Docket 96–45; FCC–96–281]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* extends the duration of the indexed interim cap ("interim cap") on the rate of growth of the Universal Service Fund ("USF"), amending the Commission's rules regarding jurisdictional separations. This action will moderate the growth of the USF while the Federal-State Joint Board on Universal Service and the Commission consider changes to the universal service rules. The interim cap is extended in order to facilitate the transition to any new universal service rules that are adopted consistent with the mandates of the Telecommunications Act of 1996.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Szymczak, Accounting and Audits Division, Common Carrier Bureau at (202) 418–0389.

SUPPLEMENTARY INFORMATION: This *Report and Order* adopts the *Recommended Decision* of the Federal-State Joint Board on Universal Service, FCC 96J–1 (released June 19, 1996) and extends the interim cap on the growth of the Universal Service Fund. The *Report and Order* extends the interim cap until the Commission's final rules on universal service, to be adopted on or before May 8, 1997, become effective. The Federal-State Joint Board recommended, and the Commission concurs in the *Report and Order*, that extending the duration of the cap will facilitate a transition to any new universal service rules that may be implemented pursuant to the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996). For all the reasons stated in the *Report and Order*, the Commission finds good cause for making the rule amendments effective on less than 30 days notice. The *Notice of Proposed Rulemaking* initiating this proceeding was released March 8, 1996 (FCC 96–93).

List of Subjects in 47 CFR Part 36

Communications common carriers, Telephone and Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. Section 36.601 is amended by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket 96–45 on or before May 8, 1997, the annual amount of the total Universal Service Fund shall not exceed the amount of the total Universal Service Fund for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops nationwide during the calendar year preceding the June filing. The total Universal Service Fund shall consist of the Universal Service expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the

difference between the number of total working loops on December 31 of the year preceding the June filing and the number of total working loops on December 31 of the second year preceding that filing, both calculated pursuant to § 36.611(a)(8).

3. Section 36.622 is amended by revising paragraph (c) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket No. 96–45 on or before May 8, 1997, the National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum total Universal Service Fund allowable pursuant to § 36.601(c).

[FR Doc. 96–16761 Filed 6–28–96; 10:18 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 91–75; RM–7230]

Radio Broadcasting Services; Conway and Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lee W. Shubert, Trustee, reallots Channel 281C1 from Conway to Myrtle Beach, South Carolina, and modifies Station WYAV(FM)'s license accordingly. *See* 56 FR 14054, April 5, 1991. Channel 281C1 can be allotted to Myrtle Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.2 kilometers (12.6 miles) southwest to avoid a short-spacing to Station WLTT(FM), Channel 279C3, Shallotte, North Carolina, at petitioner's present transmitter site. The coordinates for Channel 281C1 at Myrtle Beach are North Latitude 33–35–27 and West Longitude 79–02–53. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–75, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 281C1 at Conway, and adding Channel 281C1 at Myrtle Beach.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16762 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 062196A]

Fisheries of the Exclusive Economic Zone off Alaska; Northern Rockfish in the Western Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for northern rockfish in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 1, 1996, until 2400 hrs, A.l.t., December 31, 1996.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual TAC for northern rockfish in the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). See § 679.20(c)(3)(ii). The Final 1996 Harvest Specifications of Groundfish also closed the directed fishery for northern rockfish in the Western Regulatory Area of the GOA. See 679.20(d)(1).

The Director, Alaska Region, NMFS, has determined that the 1996 TAC for northern rockfish in the Western Regulatory Area has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–16862 Filed 6–27–96; 2:46 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 128
Tuesday, July 2, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 95–098–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The removal of these prohibitions would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before August 1, 1996. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–098–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–098–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce fruit flies or other injurious plant pests into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other injurious plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of fruit flies and other injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruit and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Basil	*Ocimum* spp.	Above ground parts.
Korea	Angelica	*Aralia elata*	Edible shoot.
Morocco	Strawberry	*Fragaria* spp.	Fruit.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruit and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruit or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of fruit flies or other injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

We would allow the following fruits and vegetables to be imported into the United States from the country indicated subject to the prescribed conditions and in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Babaco from Chile

We are proposing to allow babaco (fruit, *Carica* x *heilborni* var. *pentagona*) from Chile to be imported into the United States if the fruit is grown in one of the designated districts of Chile that has been determined to be free of the Mediterranean fruit fly (Medfly). The babaco would have to be accompanied by a phytosanitary certificate issued by the Chilean Department of Agriculture stating that the fruit originated in a Medfly-free province. Currently, all of the provinces of Chile except the provinces of Arica, Iquique, and Parinacota have been determined to be free of Medfly. This determination is based on a national Medfly trapping program that has been conducted in Chile for more than 10 years with the cooperation and monitoring of APHIS.[2]

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the babaco would be readily detectable by a USDA inspector. As noted, the babaco would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

[2] Details on APHIS-monitored trapping programs in Chile are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange from South Africa

We are proposing to allow clementine, grapefruit, lemon, minneola, navel orange, satsuma, and valencia orange (fruit, *Citrus* spp.) to be imported into the United States from South Africa under certain conditions designed to prevent the introduction of Medfly and other injurious plant pests into the United States.

First, we would require that the citrus be grown in, packed in, and shipped from the Western Cape Province of South Africa. We are proposing this requirement because scientific studies and surveys[3] conducted by the South African Department of Agriculture have demonstrated that this area is free from citrus blackspot, unlike other citrus-producing areas in South Africa. Further, we believe that both natural and regulatory barriers are in place that will help ensure that the Western Cape Province will remain free of citrus blackspot. The Western Cape Province's nearest citrus-producing neighbor, the Gamtoos River Valley, has, to date, had no findings or reports of citrus blackspot, and the citrus-producing areas in South Africa that are infested with citrus blackspot are separated from the Western Cape Province by mountain ranges, semi-desert areas, or long distances. Additionally, the South African government has in place regulations that prohibit the movement of nursery trees from the northern citrus-production area of South Africa into the Western Cape Province, and the South African government carefully monitors and regularly inspects citrus fruit for citrus blackspot in the growing areas and packinghouses of the Western Cape Province.

As such, we are also proposing that each shipment of citrus fruit intended for importation into the United States would have to be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the citrus fruit was grown in, packed in, and shipped from the Western Cape Province of South Africa. This requirement would ensure that only citrus fruit from areas of South Africa free of citrus blackspot would be imported into the United States.

Finally, we would require that the citrus fruit be cold treated for false codling moth and fruit flies of the genus *Ceritatis*, including Medfly, and *Pterandrus* in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The prescribed cold treatment would be conducted as follows:

22 days at −0.55 °C (31 °F) or below.

We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–6, would be adequate to prevent the introduction of Medfly and other plant pests into the United States on citrus fruit imported from South Africa.

[3] Information on these studies and surveys may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Treatment Required

Additionally, we are proposing to allow the fruits and vegetables listed below to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the PPQ Treatment Manual. These fruits and vegetables are attacked by injurious plant pests, as specified below, in their country or locality of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables can be treated to destroy the injurious plant pests.

We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

Country	Common name, botanical name, and plant part(s)
Honduras	Hyacinth bean, *Lablab purpureus*, pod or shelled Methyl Bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* would be required; fumigation would be conducted as follows: With methyl bromide in a 15-inch vacuum: 8 g/m³ (½ lb/1000 ft³) for 1½ hours at 37 °C (90 °F) or above; or 16 g/m³ (1 lb/1000 ft³) for 1½ hours at 26.5–31.5 °C (80–89 °F); or 24 g/m³ (1½ lbs/1000 ft³) for 1½ hours at 21–26 °C (70–79 °F); or 32 g/m³ (2 lbs/1000 ft³) for 1½ hours at 15.5–20.5 °C (60–69 °F); or 40 g/m³ (2½ lbs/1000 ft³) for 1½ hours at 10–15 °C (50–59 °F); or 48 g/m³ (3 lbs/1000 ft³) for 1½ hours at 4.5–9.5 °C (40–49 °F). Alternative treatment: With methyl bromide at NAP—chamber or tarpaulin:

Country	Common name, botanical name, and plant part(s)
	24 g/m³ (1½ lbs/1000 ft³) for 2 hours at 26.5 °C (80 °F) or above, with minimum gas concentrations of: 19 g (19 oz) at ½ hour after fumigation begins. 14 g (14 oz) at 2 hours after fumigation begins; or 32 g/m³ (2 lbs/1000 ft³) for 2 hours at 21–26 °C (70–79 °F), with minimum gas concentrations of: 26 g (26 oz) at ½ hour after fumigation begins. 19 g (19 oz) at 2 hours after fumigation begins; or 40 g/m³ (2½ lbs/1000 ft³) for 2 hours at 15.5–20.5 °C (60–69 °F), with minimum gas concentrations of: 32 g (32 oz) at ½ hour after fumigation begins. 24 g (24 oz) at 2 hours after fumigation begins; or 48 g/m³ (3 lbs/1000 ft³) for 2 hours at 10–15 °C (50–59 °F), with minimum gas concentrations of: 38 g (38 oz) at ½ hour after fumigation begins. 29 g (29 oz) at 2 hours after fumigation begins.
	Yard long bean, *Vigna unguiculata* subsp. *sesquipedalis*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
Nicaragua	Broad bean, *Vicia faba*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
	Green bean, *Phaseolus* spp., pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
	Mung bean, *Vigna radiata*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from APHIS by writing to the Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27555.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for hyacinth beans and yard long beans from Honduras and broad beans, green beans, and mung beans from Nicaragua. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rulemaking freezes methyl bromide production in the United States at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Proposal of Expansion of Medfly-Free Area in Belize

We are proposing to recognize the northern portion of the district of Stann Creek in Belize as free from Medfly and to allow papaya to be imported into the United States from this area without treatment for Medfly.

Belize has conducted a national Medfly trapping program for more than 6 years with the cooperation and monitoring of APHIS.[4] An intensive, ongoing trapping program, combined with an aggressive eradication campaign including intensified trapping, ground spraying with malathion bait, and fruit stripping, in the district of Stann Creek has established that the northern portion of that district qualifies as a Medfly-free area. The area of the Stann Creek district that would not be included in the proposed Medfly-free zone is the Placencia Peninsula area because this area has ports of entry that receive cargo and travellers from Honduras and is therefore subject to occasional Medfly introductions. The exact boundaries of the excluded area are as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Road; then west along Riversdale Road to Southern Highway; then south along the Southern Highway to Independence Road; then east along Independence Road to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning.

Therefore, we are proposing to allow papaya to be imported from the Medfly-free area of the Stann Creek district without treatment for Medfly if the papaya is accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in the Medfly-free area of the Stann Creek district. As is routine, APHIS would continue to be directly involved in the monitoring of Belize's national Medfly trapping program in order to assist the district of Stann Creek in maintaining Medfly-free status. Currently, papaya from the Cayo, Corozal, and Orange Walk districts of Belize may be imported into the United States without treatment for Medfly if the papaya is accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in those Medfly-free districts. Papaya grown in Belize outside the Medfly-free areas may also be imported into the United States, provided the fruit is treated for Medfly in accordance with the PPQ Treatment Manual.

Like all other papaya imported into the United States from Belize, papaya grown in the Medfly-free area of the Stann Creek district would be prohibited entry into Hawaii—where most domestically grown papayas are produced—as a precaution against the possible introduction of papaya fruit fly (*Toxotrypana curvicauda*). Accordingly, the cartons in which the papaya are packed would have to be stamped "Not for importation into or distribution in HI."

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the papaya would be readily detectable by a USDA inspector. As noted, the papaya would be subject to inspection, disinfection, or both, at the

[4] Details on APHIS-monitored trapping programs in Belize are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

port of first arrival, in accordance with § 319.56–6.

Miscellaneous

We are also proposing to make minor editorial changes to the table in § 319.56–2t for clarity and consistency. Our amendments would involve removing the common name "Yam bean" and replacing it with "Jicama" and, for importations of tarragon from Guatemala and Panama, removing the plant part description "Leaf and stem" and replacing it with "Above ground parts." We believe that these amendments will clarify the regulations by keeping the common names in the table up-to-date and by keeping the plant part descriptions uniform.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could have introduced injurious plant pests into the United States.

Our proposal is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables would be required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Basil from Argentina

From 1990 to 1994, the value of U.S. basil imports averaged $3.3 million annually. This average includes import values for 1994 when, due to a record import volume of 3,220 metric tons, U.S. basil imports amounted to $4.6 million. No information is available on U.S. basil production.

It is estimated that Argentina produces about 1,500 metric tons of basil annually. If commercial conditions are favorable, basil exports to the United States could, over time, reach 200 metric tons a year. This amount is only about 6 percent of current U.S. basil imports and, therefore, is not expected to have a significant effect on the U.S. basil market.

Babaco from Chile

Chile produced 334 metric tons of babaco from 1994 to 1995. Of this amount, only 6.9 metric tons were exported, and all exported babaco went to Argentina. There is no data available on production or importation of babaco by the United States. We do not expect that babaco imported from Chile would have a significant impact on U.S. producers or other small entities.

Hyacinth Bean and Yard Long Bean from Honduras

No information is available on potential U.S. imports of hyacinth bean or yard long bean from Honduras or on U.S. production of these commodities.

Angelica From Korea

Korea produces about 1,300 metric tons of angelica a year. Of this amount, only 10 kilograms were exported in 1994 and 14 kilograms in 1995. Given the negligible quantities exported in the last 2 years, it is anticipated that very little angelica will be imported into the United States from Korea. Therefore, no significant impact on U.S. entities is expected.

Strawberry From Morocco

In 1994, total U.S. strawberry production was 737,580 metric tons. That year, the United States exported 57,332 metric tons of fresh strawberries and 28,637 metric tons of frozen strawberries and imported 19,843 metric tons of fresh strawberries and 25,050 metric tons of frozen strawberries. Therefore, in 1994, U.S. exports of fresh strawberries surpassed U.S. imports of fresh strawberries by nearly three times, while frozen strawberry exports and imports were more balanced.

Morocco produced about 35,000 metric tons of strawberries in the 1994–95 season. During that season, Morocco exported about 9,000 metric tons of fresh strawberries and 11,000 metric tons of frozen strawberries.

Future U.S. strawberry imports from Morocco are estimated at 160 metric tons of strawberries per year. As these estimated strawberry imports from Morocco constitute less than .02 percent of U.S. strawberry production, they are not expected to have a significant impact on U.S. entities, large or small.

Broad Bean, Green Bean, and Mung Bean from Nicaragua

In 1994, total U.S. green bean production was 916,750 metric tons. Of this amount, 20,324 metric tons, or 2.2 percent of total production, was exported. In 1994, green bean imports amounted to 11,230 metric tons.

U.S. production data is not available for broad bean and mung bean. However, in 1994, the United States exported 389 metric tons of dried broad bean and 2,134 metric tons of dried mung bean. U.S. imports of these commodities in 1994 totaled 610 metric tons of dried broad bean and 7,178 metric tons of dried mung bean.

No information is available on potential imports of green bean, broad bean, and mung bean from Nicaragua. Given the sizable quantity of green beans produced in the United States and given the import levels for broad bean and mung bean, potential import of these commodities from Nicaragua is not expected to have a significant impact on U.S. producers or other small entities.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange From South Africa

In the 1994–95 season, the total value of the U.S. citrus crop was $2.25 billion. The 1994–95 value of U.S.-produced navel oranges (early and midseason) was $836 million, valencia oranges $727

million, grapefruit $301 million, and lemon $265 million. Production value is not available for clementine, satsuma, and minneola.

In 1994, the United States exported fresh citrus and citrus products valued at more than $650 million and imported fresh citrus and citrus products valued at about $70 million. By weight, about 50 percent of 1994 fresh citrus exports were oranges and tangerines, about 40 percent grapefruit, and about 10 percent lemons and limes.

South Africa exports about two-thirds of its citrus crop. The 1996 projected exports of citrus from the Western Cape Province of South Africa to the United States include 10,500 metric tons of navel oranges; 12,750 metric tons of valencia oranges; 8,000 metric tons of clementines; 75 metric tons of grapefruit; 3,000 metric tons of lemons; 1,000 metric tons of satsuma; and 900 metric tons of minneola. These projections amount to only a fraction of one percent of U.S. production of citrus.

Additionally, as South Africa exports most of its fresh citrus and citrus products during the summer months, South African citrus would not compete with the late fall, winter, and early spring citrus production season in the United States.

Therefore, due to summer arrival of citrus from South Africa, the relatively negligible quantity of citrus expected to be imported into the United States from South Africa, and the fact that U.S. citrus exports are more than nine times greater than U.S. citrus imports, we expect that South African citrus exports to the United States would not have a significant impact on U.S. producers, exporters, or importers of citrus. Citrus importers in the United States could benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is at its lowest.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will 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 proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–098–1. Please send a copy of your comments to: (1) Docket No. 95–098–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW, Washington, DC 20250. Comments on the information collection or recordkeeping requirements included in this proposed rule are due 60 days from the proposed rule's date of publication in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. In order for some of these fruits and vegetables to be safely imported into the United States, we would require the use of a phytosanitary certificate, issued by plant health officials of the exporting country, stating that the fruits or vegetables originated in an area free of certain plant pests. This requirement would help ensure that only fruits and vegetables that do not present an unacceptable risk of introducing injurious plant pests into the United States would be imported into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed 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 1.31 hours per response.

Respondents: Foreign plant health officials.

Estimated number of respondents: 300.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 393 hours.

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are proposed to be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection

and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

4. A new § 319.56–2q would be added to read as follows:

§ 319.56–2q Administrative instructions: conditions governing the entry of citrus from South Africa.

Clementine (*Citrus reticulata*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), minneola (*C. paradisi* x *C. reticulata*), navel orange (*Citrus sinensis*), satsuma (*Citrus reticulata*), and valencia orange (*Citrus sinensis*) may be imported into the United States from the Western Cape Province of South Africa only under the following conditions:

(a) The citrus fruit must be grown in, packed in, and shipped from the Western Cape Province of South Africa.

(b) The citrus fruit must be cold treated for false codling moth and fruit flies of the genus *Ceritatis* and *Pterandrus* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(1) If the cold treatment is to be conducted in the United States, entry of the citrus fruit into the United States is limited to ports listed in § 319.56–2d(b)(1).

(2) If the cold treatment is conducted in South Africa or in transit to the United States, entry of the citrus into the United States may be made through any U.S. port.

(c) Each shipment of citrus fruit must be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the conditions of paragraph (a) of this section have been met.

5. In § 319.56–2t, the table would be amended as follows:

a. In the entries for Costa Rica, Guatemala, and Philippines, under the heading *Common name,* by removing the words "Yam bean" from each entry and adding the word "Jicama" in their places.

b. In the entries for Guatemala and Panama, the entry for Tarragon would be amended in the fourth column, under the heading *Plant part(s),* by removing the words "Leaf and stem" and adding the words "Above ground parts" in their place.

c. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

d. By adding, in alphabetical order, entries for Basil from Argentina, Babaco from Chile, Angelica from Korea, and Strawberry from Morocco to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina			
*	*	*	* * * *
	Basil	*Ocimum* spp.	Above ground parts.
*	*	*	* * * *
Belize			
*	*	*	* * * *
	Papaya	*Carica papaya*	Fruit (Must be accompanied by a phytosanitary cer tificate issued by the Belizean depart ment of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning. Papayas from other areas of Belize enterable only with treatment—see § 319.56–2x). Pro hibited entry into Hawaii due to the papaya fruit fly, *Toxotrypana curvicauda.* Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
*	*	*	* * * *
Chile	Babaco	*Carica* x *heilborni* var. *pentagona.*	Fruit. (From Medfly-free areas—see § 319.56–2j. Fruit must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a Medfly-free province.)
*	*	*	* * * *
Korea	Angelica	*Aralia elata*	Edible shoot.
*	*	*	* * * *
Morocco	Strawberry	*Fragaria* spp.	Fruit.
*	*	*	* * * *

6. In § 319.56–2x, paragraph (a), the table would be amended as follows:

a. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

b. By adding, in alphabetical order, entries for Hyacinth bean and Yard long bean from Honduras and Broad bean, Green bean, and Mung bean from Nicaragua to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/ locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
Belize	Papaya	*Carica papaya*	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning—see § 319.59–2t.) Papayas prohibited entry into Hawaii due to the papaya fruit fly, *Toxotrypana curvicauda*. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
*	*	*	* * * *
Honduras	Hyacinth bean.	*Lablab purpureus*	Pod or shelled.
	Yard long bean.	*Vigna unguiculata*, subsp. *sesquipedalis*.	Pod or shelled.
*	*	*	* * * *
Nicaragua	Broad bean	*Vicia faba*	Pod or shelled.
	Green bean	*Phaseolus* spp	Pod or shelled.
	Mung bean	*Vigna radiata*	Pod or shelled.
*	*	*	* * * *

* * * * *

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16870 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR PART 1240

[FV–96–707]

Honey Research, Promotion, and Consumer Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document gives notice that a referendum will be conducted to determine whether the continuance of the Honey Research, Promotion, and Consumer Information Order is favored by a majority of the producers, producer-packers, and importers voting in the referendum. This action establishes the voting period, representative period, method of voting, and agents.

DATES: The referendum will be conducted by mail ballot from August 1 through August 30, 1996. The representative period for establishing voter eligibility shall be the period from January 1, 1994, through December 31, 1995.

ADDRESSES: Copies of the Honey Research, Promotion, and Consumer Information Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, Room 2535–S, P.O. Box 96456, Washington, D.C. 20090–6456. Telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible honey producers, producer-packers, and importers to determine whether the continuance of the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR 1240] is favored by persons voting in the referendum. The Order is authorized under the Honey Research, Promotion, and Consumer Information Act, as amended (act) [7 U.S.C. 4601–4612].

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 1994, through December 31, 1995. Persons who are producers, producers and handlers, or importers of honey or honey products at the time of the referendum and during the representative period are eligible to vote. Persons who have received an exemption from assessment for the entire representive period are ineligible to vote. The referendum shall be conducted by mail ballot from August 1 through 30, 1996.

Section 13(b)(1) of the act provides that 5 years from the date on which the Secretary of Agriculture (Secretary) issues an order authorizing the collection of assessments, and every 5 years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the Order. On July 21, 1986, the Secretary issued the Order, and the first continuance referendum was conducted in August 1991. Therefore, this order is issued pursuant to the Act's requirements and gives producers and importers a second opportunity to vote on whether the program will continue.

Section 13(d) also provides that the Secretary shall suspend or terminate the Order if termination or suspension is favored by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or

import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. It is estimated that there are 8,300 producers, 510 producer-packers, and 350 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

It is hereby directed that a referendum be conducted among eligible producers, producer-packers, and importers to determine whether they favor the continuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 1994, through December 31, 1995. A referendum shall be conducted by mail ballot from August 1 through 30, 1996.

Section 13(d)(1) of the act provides that the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the Order. Therefore, voters will vote on whether the program will continue. Section 13(d) also provides that the Secretary shall suspend or terminate the Order if termination or suspension is favored by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order [7 CFR 1240.200–1240.207] shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known producers, producer-packers, and importers. Persons who have produced, produced and handled, or imported honey or honey products during the representative period are eligible to vote. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote. Any eligible producer, producer-packer, or importer who does not receive a ballot and related material should immediately contact the referendum agents.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601–4612.

Dated: June 26, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–16839 Filed 6–27–96; 2:46 pm]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 95–078–1]

RIN 0579–AA74

Humane Treatment of Dogs and Cats; Tethering and Temperature Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the humane treatment of dogs and cats under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure. We are also proposing to amend the regulations by revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. We are taking these actions because our experience in enforcing the Animal Welfare Act has led us to conclude that tethering dogs as a means of primary enclosure is not a humane practice. Also, temperatures exceeding 90 °F can be harmful to dogs and cats. These actions will help ensure that dogs and cats in facilities regulated under the Animal Welfare Act will be treated in a humane manner.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–078–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–078–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains requirements concerning dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas: (1) space requirements for primary enclosures, including room for exercise; (2) sanitation, materials, flooring, and construction of primary enclosures; (3) veterinary care and breeding frequency; and (4) transportation by land and air. APHIS has considered all of the recommendations and opinions expressed by participants of these workshops at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on tethering and temperature requirements. There were many recommendations expressed in the workshops on issues closely related to what we are proposing in this

document, as well as recommendations on issues other than tethering and temperature requirements. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

Tethering of Dogs

Currently, the regulations provide that dogs in outside housing facilities regulated under the AWA may be kept on tethers as a means of primary enclosure. Primary enclosure is defined in 9 CFR part 1 to mean:

(A)ny structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

A dog whose primary enclosure is a tether would be attached to the tether almost all of the time, except when it is allowed off of the tether for exercise or other activities. The regulations require that a dog on a tether must have a shelter (such as a dog house or other structure) and the tether must allow the dog access to the shelter and to food and water containers. The housing area where the dog is tethered must be surrounded by a perimeter fence of sufficient height to keep out unwanted animals.

Our experience in enforcing the AWA has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts the dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. We are proposing to remove the option for facilities to use tethering as a means of primary enclosure. We would remove all references to tethering from the definition of primary enclosure in 9 CFR part 1, and we would remove the provisions for tethering as a means of primary enclosure from the regulations in 9 CFR part 3. Facilities would still have a number of primary enclosure options available to them, such as a cage or a fenced-in run.

Temperature

The regulations for indoor housing facilities, sheltered housing facilities, and mobile or traveling housing facilities that are regulated under the AWA provide that the ambient temperature in the facilities may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations also provide that when any person subject to the AWA transports dogs or cats, the cargo spaces in primary conveyances (motor vehicle, rail, and marine) and the holding areas in the terminal facilities (such as at airports, rail stations, or maritime ports) may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

The regulations do not specify a maximum temperature at which dogs or cats may be held for up to 4 hours. Because there is no maximum temperature restriction in the regulations, it is conceivable that a dog or cat could be exposed to extremely high temperatures for up to 4 hours. Temperatures exceeding 90 °F can be harmful to dogs and cats even if they are exposed to those temperatures for less than 4 hours.

In the case of air transportation, there is no maximum temperature specified to which dogs or cats can be exposed, even for over 4 hours. Although the regulations do state that any cargo area where dogs or cats are held must be cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there, there have been incidents where dogs or cats were exposed to extremely high temperatures during air travel. Such exposure resulted in serious harm or, in some cases, death to those animals.

For these reasons, we are proposing to require that the ambient temperature in indoor housing facilities, sheltered housing facilities, mobile or traveling housing facilities, primary conveyances (motor vehicle, rail, air, and marine), and terminal facilities must never rise above 90 °F (32.2 °C) when dogs or cats are present.

Licensed dog and cat dealers and transporters of dogs and cats would have several alternative methods of complying with this proposal. They could install air conditioning or electric fans to cool the air inside the facilities and conveyances. Dog and cat dealers could also comply by establishing outdoor shelters, which are not subject to temperature requirements, or providing animals in sheltered housing facilities with outdoor runs where they are not already available. Outdoor shelters and runs provide the dogs and cats with access to fresh air, air movement (breezes and winds), shade (required by the regulations), and other climatic and environmental factors which help to alleviate suffering from high temperatures. Also, humidity levels can become unbearable in enclosed facilities where the temperature exceeds 90 °F. Suffering from humidity levels outdoors, even when the temperature is above 90 °F, is usually mitigated by other climatic factors, as described above.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and size of licensed facilities that would have to make changes to comply with the proposed temperature requirements, and the kind of change those licensees would likely choose in order to comply (for example, installing air conditioning or constructing outdoor facilities).

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

This proposed rule would eliminate the use of tethering as a means of primary enclosure for dogs, and would affect Class A and Class B licensed dog dealers. Over 95 percent of Class A and Class B licensed dog dealers are considered small businesses.

There is no information available on the actual number of Class A and Class B licensed dog dealers who use tethering as a means of primary enclosure. However, kennels and cages are currently the preferred means of primary enclosure, with tethering sometimes used as a temporary restraint. Tethering is no longer a generally accepted practice within the dog dealer industry, and some industry groups prohibit their members from using tethering as a means of permanent restraint. Therefore, we do not expect this proposal to have a significant impact on dog dealers, large or small, because tethering as a means of primary

enclosure is rarely, if ever, utilized by Class A and Class B licensed dog dealers.

This proposed rule would also revise the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to state that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. This temperature requirement would affect Class A and Class B licensed dog and cat dealers. Currently, the regulations state (except for air transportation) that the ambient temperature in a facility, holding area, or cargo space must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

There are currently a total of 4,325 licensed dog and cat dealers (over 95 percent of which are considered small businesses, as stated previously). We do not know precisely how many of these house only dogs and/or cats, but it is probably close to 90 percent or more. We expect that the additional temperature requirement would impact Class A and Class B licensed dog and cat dealers mainly in the States of Arkansas, Missouri, Kansas, Oklahoma, and Iowa. These are States in which there is a high concentration of Class A and Class B licensed dog and cat dealers (approximately 2,326 dealers), and in which the temperatures can be highly variable in the summer months, with many days reaching temperatures above 90 °F. In most cases, if a dealer has been able to comply with the requirement that the ambient temperature in the facility must not exceed 85 °F for more than 4 consecutive hours, they would likely be able to comply with this proposal without any additional expense. We estimate that at least 85 percent of potentially affected entities are already in compliance with the temperature requirements in this proposed rule.

However, if a dealer finds that he or she is not prepared to meet the new requirement, the cost of compliance would depend on what method the dealer chooses to cool the facility. For indoor and sheltered housing facilities, the alternatives would most likely include: (1) Installation of air conditioning. Installation of air conditioning could cost between $1,000 and $3,000 per unit, and operational expenditures for electricity could range between $200 to $500 per year; (2) Installation of electric fans. Installation of electric fans could cost between $300 and $500 per unit, and operational expenditures for electricity could range between $100 to $300 per year; (3) Establishing outdoor shelters, which are not subject to temperature requirements. We estimate that it would cost $17.00 to $29.00 to establish an outdoor facility for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 18 feet of chain-link fence at $.40 to $.50 per foot, a $20 to $30 commercial dog house, and $10 to $20 in labor); or (4) Providing dogs and cats in sheltered housing facilities with outdoor runs where they are not already available. We estimate that it would cost $8.60 to $22.50 to construct an outdoor run for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 9 to 15 feet of chain-link fence at $.40 to $.50 per foot plus $5.00 to $15.00 in labor).

All these cost estimates could vary considerably depending on the number of animals housed in the facility, the quality of the materials used in construction, and the adaptability of existing structures. Because most dog and cat dealers are small businesses, the cost of installing air conditioning may comprise a significant portion of their overall operational expenses. It is anticipated that the affected dealers would choose the less costly alternatives of installing electric fans or establishing outdoor shelters or runs.

We do not expect that this proposal would impact transporters of dogs and cats. Most transporters (motor vehicle, rail, air, and marine) already have the capacity to provide adequate ventilation and/or air conditioning for animals in their cargo areas and holding facilities. The majority of dog and cat deaths from extremely high temperatures in cargo areas or holding facilities have been due to human error. This proposal would help ensure that transporters utilize their existing capacity to maintain a healthy temperature range for the animals they transport, and would not likely require transporters to install additional cooling systems.

The alternative to this proposed rule would be to make no changes to the temperature and tethering requirements in the regulations. After consideration, we rejected this alternative because we believe that tethering dogs as a means of primary enclosure is not a humane practice, and because temperatures exceeding 90 °F can be harmful to dogs and cats.

This proposed rule contains no paperwork or recordkeeping requirements.

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 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR parts 1 and 3 would be amended as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 1.1, the definition for *primary enclosure* would be revised to read as follows:

§ 1.1 Definitions.

* * * * *

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch.

* * * * *

PART 3—STANDARDS

3. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 3.2, 3.3, and 3.5 [Amended]

4. In §§ 3.2, 3.3, and 3.5, paragraph (a) of each section would be amended by

adding a new identical sentence at the end of each paragraph to read as set forth below:

(a)* * * The ambient temperature in the facility must never rise above 90 °F (32.2 °C) when dogs and cats are present.

* * * * *

§ 3.6 [Amended]

5. Section 3.6 would be amended by removing paragraph (c)(2), and by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.

6. In § 3.15, paragraphs (d) and (e) would be revised to read as follows:

§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(d) During air transportation, dogs and cats must be held in cargo areas that are heated and cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats. The ambient temperature in the cargo areas must never rise above 90 °F (32.2 °C) when dogs or cats are present. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground, unless flying under 8,000 ft. Dogs and cats must have adequate air for breathing at all times when being transported.

(e) During surface transportation, the ambient temperature within any animal cargo space containing live dogs or cats must never rise above 90 °F (32.2 °C). Moreover, auxiliary ventilation, such as fans, blowers, or air conditioning, must be used when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). The ambient temperature must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours, nor fall below 45 °F (7.2 °C) for more than four consecutive hours.

* * * * *

7. In § 3.18, paragraph (d) would be revised to read as follows:

§ 3.18 Terminal facilities.

* * * * *

(d) *Temperature.* The ambient temperature in an animal holding area containing live dogs or cats must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) for more than 4 consecutive hours at any time dogs or cats are present. The ambient temperature in the animal holding area must never rise above 90 °F (32.2 °C) when dogs or cats are present.

* * * * *

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16871 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 3

[Docket No. 95–100–1]

RIN 0579–AA78

Humane Treatment of Dogs and Cats; Wire Flooring

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the requirements for the humane treatment of dogs and cats under the Animal Welfare Act to require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material such as plastic or fiberglass. Coated wire has a larger diameter than bare wire, and is therefore more comfortable on animals' feet. Coated wire is also not susceptible to rust, improving the floor's structural strength and making it easier to clean and sanitize than bare wire flooring. We believe that requiring coated wire to be used for wire floors in primary enclosures would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries, and would ensure that wire flooring for dogs and cats is clean and sanitary.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–100–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–100–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (the Act)(7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas. One of the workshop topic areas concerned sanitation, materials, flooring, and construction of primary enclosures. APHIS has considered all of the recommendations and opinions expressed by participants of this workshop at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on flooring in primary enclosures. There were many recommendations expressed in the workshops on issues other than flooring in primary enclosures. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

Currently, the regulations require that primary enclosures for dogs and cats must, among other things, enable all surfaces in contact with the animals to be readily cleaned and sanitized, or be replaceable when worn or soiled. Primary enclosures must also "(h)ave floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough

to hold all the occupants of the primary enclosure at the same time comfortably must be provided."

Wire floors are preferable to solid floors for many dealers, breeders, researchers, and exhibitors because waste material can pass through the openings in the floor, making the enclosures easier to keep clean. In many primary enclosures that have wire floors, the floors are constructed of bare wire. It is our experience in enforcing the Act, however, that bare wire flooring is inadequate in providing for the comfort and well-being of dogs and cats.

Bare wire can be uncomfortable on dogs' and cats' feet because the wire has a narrow diameter, providing inadequate support and potentially causing lesions and sores on the animals' feet. Bare wire is also prone to rust, which not only affects the structural strength of the primary enclosure, but can cause foot injuries because rusty wire is abrasive and because dogs and cats may be cut or poked by broken, rusty pieces of wire. Rusted wire is also difficult to clean and sanitize thoroughly, because the rust makes the wire semi-porous in places, allowing bacteria and viruses to remain even after thorough cleaning. Further, bare wire flooring often sags or bends between structural supports, creating an uncomfortable resting surface for the animals.

Wire that has been coated with plastic, fiberglass, or similar material has a larger diameter than bare wire, so that floors constructed from coated wire provide better support and are more comfortable on dogs' and cats' feet. Coated wire also eliminates the problem of rusting, making coated wire floors easier to clean and maintain, and less likely to cause foot injuries, than bare wire floors. In addition, the coating on the wire adds strength, making it less likely that coated wire would sag or bend between structural supports.

For these reasons, we are proposing to prohibit bare wire in the construction of primary floors and to require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. We are not proposing to limit the material with which the wire must be coated to only plastic or fiberglass because there is a variety of materials currently on the market that would be adequate, and new and better materials may be introduced in the future. Also, depending on the size of the openings in the flooring, and the size and weight of a particular animal, different diameters of coated wire may be adequate to provide increased comfort for the animals. Some wires are sold, however, that are coated with a very thin layer of material, which would not provide any increased comfort over bare wire. For this reason, we propose to further require that the coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury. Also, coated wire floors would have to be strong enough so that the floor does not sag or bend between structural supports.

We realize that replacing existing bare wire flooring could be a substantial cost, depending on the size of the facility. Coated wire flooring is significantly more expensive than bare wire. To ease the burden of complying with the new requirement, we are proposing that the final rule would have two effective dates: one 30 days after publication of the final rule and one 2 years after publication of the final rule. Any new construction done on and after 30 days after publication of the final rule would have to be in compliance with the new flooring requirements. Also, on and after 30 days after publication of the final rule, any bare wire floors in existing primary enclosures that are replaced because of wear would have to be replaced in compliance with the new flooring requirements. On and after 2 years from the effective date of a final rule, all licensees and registrants would have to comply with the new requirements. Wire floors usually wear out from rust and general usage within a 2 year time-frame, so we believe that almost all existing bare wire floors would be replaced by coated wire before the 2 year grace period expired. The delayed effective date would give breeders, dealers, researchers, and exhibitors the opportunity to retain their existing bare wire floors until they wear out under normal usage. The 2 year delay would also give time to prepare for the additional cost of replacing existing floors.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining how many licensees and registrants would have to replace bare wire flooring as a result of this proposed rule and the average number of animals these licensees house, to help us better determine the economic impact of this proposal.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

This proposed rule would require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily, is comfortable on the animals' feet, and protects the animals' feet from injury. The coated wire must also be strong enough so that the floor does not sag or bend between structural supports. We believe that requiring coated wire floors in primary enclosures would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries, and would ensure that wire flooring for dogs and cats is clean and sanitary.

This proposed rule would affect all breeders, dealers, research facilities, and exhibitors of dogs and cats that are licensed or registered under the Animal Welfare Act and that house their animals in primary enclosures with bare wire floors. There are currently 4,325 licensed breeders and dealers, 2,339 licensed exhibitors, and 2,688 registered research facilities and sites. We do not know how many of these licensees and registrants house dogs and cats. Further, we cannot determine the exact number of licensees and registrants that house their dogs and cats on wire flooring or the total number of animals involved, but it is known that a significant percentage of licensees and registrants do use wire flooring in primary enclosures because it is easier to maintain than solid flooring. Most wire floored enclosures are constructed with bare wire. Some licensees, however, have converted existing bare wire flooring to coated wire, and coated wire flooring is currently the preferred material for new construction.

The market price of both bare and coated wire varies depending on the quality and diameter width of the material. Floor space requirements for primary enclosures also vary depending

on the size of the animals. Large dogs on average require about 13 square feet of floor space, while small dogs require about 6.5 square feet. Bare wire of the type most often used currently sells for about $1.50 per square foot. Coated wire that meets the other standards for use under the Animal Welfare Act sells for between $2.25 and $5.00 per square foot. Requiring the use of coated wire could result in increased costs for replacement of between 60 and 233 percent. Thus, replacing bare wire with coated wire could result in additional expenditures ranging from $4.87 to $22.75 for each small dog housed and from $13.00 to $45.50 for each large dog. We estimate that it would take approximately 1 to 1½ hours per cage to replace bare wire flooring with coated wire. Labor could run from $5.00 to $10.00 per hour.

The total cost to an individual licensee or registrant would depend on the number of animals being housed. However, because coated wire floors do not rust, they need to be replaced far less frequently than bare wire floors. Therefore, the initial cost of replacing the floors would be made up, in part, over a period of time, because the coated wire floor will provide longer use.

To ease the burden of complying with the new requirement, we are proposing that the final rule would have two effective dates: one 30 days after publication of the final rule and one 2 years after publication of the final rule. Any new construction done on and after 30 days after publication of the final rule would have to be in compliance with the new flooring requirements. Also, on and after 30 days after publication of the final rule, any bare wire floors in existing primary enclosures that are replaced because of wear would have to be replaced in compliance with the new flooring requirements. On and after 2 years from the effective date of a final rule, all licensees and registrants would have to comply with the new requirements. Wire floors usually wear out from rust and general usage within a 2 year time-frame, so we believe that almost all existing bare wire floors would be replaced by coated wire before the 2 year grace period expired. The delayed effective date would give breeders, dealers, researchers, and exhibitors the opportunity to retain their existing bare wire floors until they wear out under normal usage. The 2 year delay would also give time to prepare for the additional cost of replacing existing floors.

The alternative to this proposed rule would be to make no change to the flooring requirements for primary enclosures. After consideration, we rejected this alternative because we believe that bare wire floors are inadequate to provide for the comfort and well-being of dogs and cats.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.028 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 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 would be amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 3.6, a new paragraph (a)(2)(xii) would be added to read as follows:

§ 3.6 Primary enclosures.

(a) *General requirements.* * * *

(2) * * *

(xii) *The following requirements are effective for primary enclosures constructed on or after [insert date 30 days after publication of final rule] and for bare wire floors replaced on or after [insert date 30 days after publication of final rule]. On or after [insert date 2 years after publication of final rule] the following requirements are effective for all primary enclosures.* The floor of the primary enclosure may not be constructed of bare wire. If the floor of the primary enclosure is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. The coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury. Coated wire floors must be strong enough so that the floor does not sag or bend between structural supports.

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16872 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AAL–4]

Proposed Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Ketchikan, AK. The development of the Global Positioning System (GPS) instrument approach (GPS-B) to Ketchikan International Airport, AK, and the establishment of the Special Visual Flight Rules (VFR) Seaplane holding area at Ward Cove have made this action necessary. The areas would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations and provide Special VFR seaplane holding at Ketchikan, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 95–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Ketchikan, AK. This action is necessary to accommodate a new GPS instrument approach and incorporate Special VFR seaplane holding at Ketchikan, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(lat. 55°21'20"N, long. 131°42'49"W)
Ketchikan Localizer
(lat. 55°20'51"N, long. 131°42'00"W)

Within a 3-mile radius of the Ketchikan International Airport and within 1 mile each side of the Ketchikan localizer northwest/southeast courses extending from the 3-mile radius to 4.6 miles northwest and 4.1 miles southeast of the airport excluding that airspace beyond 2.5-miles beginning 1 mile east of the Ketchikan localizer northwest course clockwise to the 350° bearing from the Ketchikan International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

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

* * * * *

AAL AK E5 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(lat. 55°21'20"N, long. 131°42'49"W)
Annette Island VORTAC
(lat. 55°03'38"N, long. 131°34'42"W)
Ketchikan Localizer
(lat. 55°20'51"N, long. 131°42'00"W)

That airspace extending upward from 700 feet above the surface within 2.0 miles each side of the Ketchikan Localizer east course extending from the Ketchikan Localizer to 9.0 miles southeast of the Ketchikan International Airport and within 1.8 miles each side of the 353° radial of the Annette Island VORTAC extending from 11 miles north of the VORTAC to the Ketchikan localizer east course and within 1.9 miles either side of the Ketchikan Localizer west course extending from the localizer to 6.7 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 12-mile radius of the Annette Island VORTAC and within 10 miles east of the 169° bearing from the Clam Cove NDB extending to 10 miles southeast of the airport; and that airspace extending upward from 4,700 feet MSL within 13.2 miles east and 10.5 miles west of the 165° radial of the Annette Island VORTAC extending from the VORTAC to the U.S.-Canada border; and that airspace extending upward from 5,200 feet MSL within 10 miles

either side of the 349° bearing from the Clam Cove NDB extending to 50 miles north of the airport; and that airspace extending upward from 5,700 feet MSL within 15.6 miles south of the 311° radial of the Annette Island VORTAC extending from 15.8 miles west of the VORTAC to 56.8 miles west of the VORTAC and within 9 miles north and 14 miles south of the Ketchikan Localizer west course extending from 4.3 miles west of the airport to 42.7 miles west of the airport.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16731 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–10]

Proposed Establishment of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Nuiqsut, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 4 and RWY 22 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Nuiqsut, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–10, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Nuiqsut, AK, due to the creation of GPS approaches to RWY 4 and RWY 22. The status of Nuiqsut Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Nuiqsut, AK [New]

Nuiqsut Airport, AK
(lat. 70°12'36" N; long. 151°00'20" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nuiqsut Airport.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16730 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–8]

Proposed Revision of Class E Airspace; Merle K. (Mudhole) Smith Airport, Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Merle K. (Mudhole) Smith Airport, Cordova, AK. The development of the Required Navigation Performance (RNP) instrument approach to Merle K. (Mudhole) Smith Airport, Cordova, AK has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cordova, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–8, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Cordova, AK. This action is necessary to accommodate a new RNP instrument approach to Runway 9 at Merle K. (Mudhole) Smith Airport, Cordova, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cordova, AK [Revised]

Cordova, Merle K. (Mudhole) Smith Airport, AK
(lat. 60°29'31" N, long. 145°28'39" W)
Glacier River NDB
(lat. 60°29'56" N, long. 145°28'28" W)
Merle K. (Mudhole) Smith Localizer
(lat. 60°29'51" N, long. 145°29'59" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Merle K. (Mudhole) Smith Airport and within 4 miles each side of the 222° bearing of the Glacier River NDB extending from the 6.6-mile radius to 20 miles southwest of the airport and within 4 miles each side of the 142° bearing from the NDB extending from the 6.6-mile radius to 15.6 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles each side of the Merle K. (Mudhole) Smith Localizer east course extending from the localizer to 40.6 miles east of the airport and within 4 miles each side of the 268° bearing from the NDB extending from the Glacier River NDB to 33.6 miles west of the airport and that airspace within 4 miles west and 8 miles east of the 222° bearing from the NDB extending from 10.3 miles southwest of the NDB to 26.3 miles southwest of the NDB and within 10 miles south and 5 miles north of the 299° bearing from the Glacier River NDB extending from the 6.6-mile radius to 25 miles northwest of the airport; excluding the airspace more than 12 miles beyond the shoreline.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16729 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–11]

Proposed Establishment of Class E Airspace; Wainwright, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Wainwright, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 4 and RWY 22 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Wainwright, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, System Management Branch, AAL–530, Docket No. 96–AAL–11, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Wainwright, AK, due to the creation of GPS approaches to RWY 4 and RWY 22. The status of Wainwright Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Wainwright, AK [New]

Wainwright Airport, AK
(lat. 70°16'16.72" N, long. 159°59'41.67" W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Wainwright Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles south and 4 miles north of the 247° bearing from the Wainwright airport extending from the 8.5-mile radius to 16 miles southwest, and 6 miles north of the 068° bearing extending from the 8.5-mile radius to 16 miles east.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16728 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–12]

Proposed Establishment of Class E Airspace; Selawik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Selawik, AK. The development of a Very High Frequency (VHF) omni-directional radio range (VOR) and VOR/Distance Measuring Equipment (DME) instrument approaches to RWY 3 and RWY 21 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Selawik, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–12, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Selawik, AK, due to the creation of VOR and VOR/DME approaches to RWY 3 and RWY 21. The status of Selawik Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Selawik, AK [New]

Selawik Airport, AK
(lat. 66°36'00" N, long. 159°59'10" W)
Selawik VOR/DME, AK
(lat. 66°36'00" N, long. 159°59'30" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 4 miles south of the 231° radial of the Selawik VOR/DME extending from the 8-mile radius to 16 miles southwest, and 6 miles north of the 058° radial extending from the 8-mile radius to 16 miles northeast.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16727 Filed 7–1–96; 8:45 am]
BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–3]

Proposed Revision of Class E Airspace; Sand Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Sand Point, AK. The development of the Microwave Landing System (MLS) and Non-Directional Beacon (NDB) standard instrument approach procedures to runway (RWY) 13 and a Global Positioning System (GPS) instrument approach to RWY 31 have made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sand Point, AK.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–3, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Sand Point, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Sand Point, AK [Revised]

Sand Point Airport, AK
(lat. 55°18'55"N, long. 160°31'13"W)
Borland NDB/DME
(lat. 55°18'56"N, long. 160°31'06"W)
Sand Point MLS
(lat. 55°18'47.4"N, long 160°31'10.1"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sand Point Airport and within 3 miles each side of the 175° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 13.9 miles south of the airport and within 5.8 miles either side of the 326 azimuth from the Sand Point MLS extending from the 6.4 mile radius to 17 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles west and 14 miles east of the 175° bearing from the Borland NDB/DME extending from the NDB/DME to 22 miles south of the NDB/DME and within 9 miles west and 7 miles east of the 330° bearing from the Borland NDB/DME extending from the NDB/DME to 23 miles north of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on June 17, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16726 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–5]

Proposed Establishment of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Buckland, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 10 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Buckland, AK.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–5, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Buckland, AK. The status of Buckland Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Buckland, AK [New]

Buckland Airport, AK
(lat. 65°58′40″N, long. 161°07′44″W)
Buckland NDB
(lat. 65°58′45″N, long. 161°08′56″W)
Kotzebue VOR/DME
(lat. 66°53′09″N, long. 162°32′24″W)
Selawik VOR/DME
(lat. 66°36′00″N, long. 159°59′50″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles southwest and 4 miles northeast of the 303° bearing of the Buckland NDB extending from the 6.5-mile radius to 21 miles northwest, and 4 miles eitherside of the Kotzebue VOR/DME 115° radial from the VOR/DME to 10.5 miles northwest on the 303° bearing from the Buckland NDB, and 4 miles eitherside of the Selawik VOR/DME 190° radial from the VOR/DME to 10.5 miles northwest on the 303° bearing from the Buckland NDB.

* * * * *

Issued in Anchorage, AK, on June 17, 1996.

Willis C. Nelson

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16725 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

RIN 1076–AD16

Special Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing the elimination of regulations governing special education to streamline the regulatory process and enhance the planning and coordination of existing regulations.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Mail comments to Ken Whitehorn, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–MIB 3512, Washington, DC 20240. Comments may be hand delivered to the same address from 9:00 a.m. to 4:00 p.m. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ken Whitehorn, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 208–6675.

SUPPLEMENTARY INFORMATION:

Background

The Office of Indian Education programs is proposing to eliminate 25 CFR Part 45, Special Education, because the information contained in this part is already included in Chapter III of 34 CFR, Parts 300–399, Office of Special Education and Rehabilitative Services, Department of Education. The Office of Indian Education programs has entered into an agreement with the Department of Education to use 34 CFR Parts 300–399, as the standards for its special education programs.

Supplementary Information

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule contains no information collection requirement the elimination of which would require notification to the Office of Management and Budget.

Drafting Information

The primary author of this document is Glenn Allison, Office of Indian Education Programs, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 45

Indians—education.

Under the authority of Executive Order 12866 and for the reasons stated above, Part 45 is proposed to be removed.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16041 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–02–P

25 CFR Part 152

RIN 1076–AD42

Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule making action is to revise the Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands regulations. This rule was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand for Indian landowners and Bureau realty staff.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Mail or hand carry your comments to Terrance L. Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., MS 4513 MIB, Washington, D.C. 20240. Comments may be hand delivered from 9:00 a.m. to 4:00 p.m., Monday through Friday or sent by facsimile to Facsimile No. (202) 219–1065.

FOR FURTHER INFORMATION CONTACT: Alice Harwood, Acting Chief, Division of Real Estates Services, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., MS 4513 MIB, Washington, D.C. 20240, Telephone No. (202) 208–7737.

SUPPLEMENTARY INFORMATION: The primary author of this document is Pearl Kennedy, Realty Specialist, Division of Real Estate Services, Bureau of Indian Affairs, Department of the Interior. The proposed rule has been rewritten to facilitate its use by the general public and the individual Indians affected by the rule. Sections that no longer apply have been deleted and sections added for clarification. No substantive revisions are proposed in this rule.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9, and delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under E.O. 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.
- does not impose any unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.
- is exempt by OMB from the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and does not require a review by the Office of Management and Budget.

List of Subjects in Part 152

Indians—lands.

For the reasons given in the preamble, we propose to revise Part 152 to Title 25 Chapter 1 of the Code of Federal Regulations, as set forth below.

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.

152.1 What are the definitions of the terms used in this part?

Issuing Patents in Fee, Certificates of Competency, or Orders Removing Restrictions

152.2 Who can apply for a patent in fee?
152.3 How do I apply for a patent in fee?
152.4 What happens when I apply for a patent in fee?
152.5 Will patents in fee be issued to non-Indians and Indians with whom a special relationship does not exist?
152.6 Who can apply for a certificate of competency?
152.7 What happens when I apply for a certificate of competency?
152.8 Can certain Osage Indian adults apply for a certificate of competency?
152.9 Who can apply for an order removing restrictions?
152.10 How do I apply for an order removing restrictions?
152.11 What happens when I apply for an order removing restrictions?

Order Removing Restrictions for Members of the Five Civilized Tribes

152.12 If I am a member of the Five Civilized Tribes, how do I apply for removal of restrictions under authority other than section 2(a) of the Act of August 11, 1955?
152.13 If I am a member of the Five Civilized Tribes, what happens when I apply for removal of restrictions under section 2(a) of the Act of August 11, 1955?
152.14 If I am a member of the Five Civilized Tribes, can the restrictions be removed from my land without an application?
152.15 If I am a member of the Five Civilized Tribes, what happens when a removal of restrictions is issued to me without an application?
152.16 If I am a member of the Five Civilized Tribes, what is the effect of an order removing restrictions from my land under the Act of August 11, 1955 (69 Stat. 666)?

Sales, Exchanges, and Conveyances of Trust or Restricted Lands

152.17 Can I sell, exchange, or otherwise convey my Indian land?
152.18 Can a natural guardian or person designated by the Secretary sell my Indian land?
152.19 Can fiduciaries sell my Indian land?
152.20 Can the Secretary sell land owned by more than one person?
152.21 Can a tribe sell or exchange tribal land?
152.22 Is the Secretary's approval necessary to convey individual-owned trust or restricted lands or lands owned by a tribe?

152.23 Where do I file an application for sale, exchange, or gift?
152.24 Is an appraisal necessary?
152.25 Can I negotiate a sale, gift, or exchange of my trust or restricted lands?
152.26 How is my land advertised for sale?
152.27 What procedures are followed for an advertised sale?
152.28 What happens after the bid closing?
152.29 Can the Secretary reject bids or disapprove a sale?
152.30 Can employees of Indian Affairs bid?
152.31 Who pays for the cost of conveyance and fees?
152.32 Who pays irrigation fees and payments?

Partitions In Kind of Inherited Allotments

152.33 Can I partition my Indian lands?

Mortgages and Deeds of Trust To Secure Loans to Indians

152.34 Can I mortgage my land?
152.35 Can I make a sale on a deferred payment plan?

Denials Of Applications

152.36 When does the Secretary deny approval of my application?
152.37 Am I notified of a denial?

Receiving Information

152.38 Who can receive information regarding status of applications for patents in fee, certificates of competency, or orders removing restrictions of trust or restricted Indians lands?

Authority: 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275; 34 Stat. 1018; sec. 1, 35 Stat. 444; sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended; sec. 17, 39 Stat. 127; 40 Stat. 579; 62 Stat. 236; sec. 2, 40 Stat. 606; 68 Stat. 358; 69 Stat. 666; 25 U.S.C. 355, 372, 373, 378, 379, 404, 405, 483, unless otherwise noted.

Cross-Reference: See part 159 and part 160 in this chapter for further regulations regarding sale of irrigable lands.

§ 152.1 What are the definitions of the terms used in this part?

Agency means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

Competent means that you posses sufficient ability, knowledge, experience, and judgment to manage your business affairs, including the administration,use, investment, and disposition of any property you own and the income or proceeds derived from the property, with a reasonable degree of prudence and wisdom to prevent the loss of such property or benefits. (Act of August 11, 1955 (69 Stat. 666)).

Fiduciary means a person acting primarily for another's benefit such as a trustee, guardian, or conservator.

I and *my* mean the Indian applicant.

Patent in fee means an instrument of conveyance issued by the government to transfer the title of trust, or any interest in trust land, to a non-Indian or Indian determined to be competent. A patent in fee removes all restrictions against alienation of all restriction property and terminates the trust responsibility of the Secretary of the Interior for the land.

Restricted land means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

Secretary means the Secretary of the Interior or authorized representative acting under delegated authority.

Tribe means any Indian tribe, band, nation, pueblo, community, corporation, rancheria, colony, or other group of Indians.

Trust land means land or any interest therein held in trust by the United States for an individual Indian or tribe.

We means the Secretary of the Interior or authorized representative acting under delegated authority.

You means the Indian applicant.

Your refers to the Indian applicant.

Issuing Patents In Fee, Certificates of Competency, or Orders Removing Restrictions

§ 152.2 Who can apply for a patent in fee?

Indians 21 years of age or over. The written application must be in a form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.3 How do I apply for a patent in fee?

You must complete and submit a written application in the form approved by the Secretary and file it with the agency superintendent having immediate jurisdiction over the land.

§ 152.4 What happens when I apply for a patent in fee?

(a) If we determine that your are competent, we will issue you a fee patent and give you an inventory of your estate. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and other authorizing acts.)

(b) If we deny your application, we will tell you why in a letter. You have the right to appeal the decision under 25 CFR part 2.

(c) White Earth Reservation: We will issue a patent in fee to any adult Indian of mixed-blood owning land within the White Earth Reservation in the State of Minnesota. When you apply, we do not consider your competency (Act of March 1, 1907 (34 Stat. 1015)).

(d) Fort Peck Reservation: Interests in oil and gas underlying certain allotments on the Fort Peck Reservation were granted to certain Indians to be held in trust for them. Provisions were made to issue patents in fee for such oil and gas or patents in fee for land in certain circumstances (Act of June 30, 1954 (68 Stat. 358)).

(1) Title to the entire interest in the oil and gas, underlying a parcel of land within the Fort Peck Reservation, was conveyed by the act in fee simple status to Indian grantees who received a patent or patent in fee before June 30, 1954.

(2) We will convey by patent, without application, unrestricted fee simple title to the entire interest in oil and gas granted by this act to Indians to whom a fee patent has been issued at any time for any land within the Fort Peck Reservation or who have been determined to be competent.

(3) When we determine that the entire interest in a tract of land on the Fort Peck Reservation is owned by a competent Indian grantee of oil and gas under the act, we will issue fee patents to them, covering all interests in the land, without application.

§ 152.5 Will patents in fee be issued to non-Indians and Indians with whom a special relationship does not exist?

We will issue a patent in fee to any non-Indian, or Indian to whom the United States owes no trust responsibility, without application, whenever we determine that trust land, or any interest in trust land, has been acquired through inheritance or devise.

§ 152.6 Who can apply for a certificate of competency?

Indians 21 years old or over, except certain adult members of the Osage Indian Tribe as provided in § 152.8, who hold land or an interest in land under a restricted fee patent. The written application must be in a form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.7 What happens when I apply for a certificate of competency?

(a) If we determine that you are competent, we will approve your application, and a certificate of competency will be issued. The delivery of the certificate will have the effect of removing the restrictions from the described land. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372)).

(b) If we deny your request, we will tell you why in a letter. You have the right to appeal this action under part 2 of this chapter.

§ 152.8 Can certain Osage Indian adults apply for a certificate of competency?

Adult members of the Osage Indian Tribe of one-half or more Indian blood may apply for a certificate of competency. Applications must be in the form approved by the Secretary. If the Secretary determines that you are competent, a certificate of competency will be issued removing restrictions against alienation on all restricted property and terminating the United States trust responsibility on all restricted property. Your Osage headright interest remains under the trust responsibility of the United States. For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see part 154 of this chapter.

§ 152.9 Who can apply for an order removing restrictions?

(a) You can apply for an order removing restrictions if you are:

(1) An Indian not under legal disability under the laws of the State where you reside or where the land is located; or

(2) A court-appointed guardian or conservator of any Indian.

(b) If you are a member of the Five Civilized Tribes, see § 152.13.

§ 152.10 How do I apply for an order removing restrictions?

(a) You must send a written application, in the form approved by the Secretary, telling why you need the removal of restrictions, to the agency having immediate jurisdiction over the lands.

(b) If you are a member of the Five Civilized Tribes, see § 152.12

§ 152.11 What happens when I apply for an order removing restrictions?

(a) If we determines that you are competent or that a removal of restrictions is in your best interest, we will approve your application and issue an order removing restrictions from the described lands.

(b) If you are a member of the Five Civilized Tribes, see § 152.13.

(c) If we deny the application, we will tell you why in a letter. You have the right to appeal this action under part 2 of this chapter.

Order Removing Restrictions for Members of the Five Civilized Tribes

§ 152.12 If I am a member of the Five Civilized Tribes, how do I apply for removal of restrictions under authority other than section 2(a) of the Act of August 11, 1955?

When you ask us to remove restrictions on your restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), you may not include lands, or interest in lands, acquired by inheritance or devise. You can apply in either of the two following ways:

(a) If you apply for an unconditional removal, we will grant the removal if we determine that you are competent.

(b) If you apply for a conditional removal, we will grant the removal. The conditional order will be effective only and simultaneously with the execution of a deed by you and upon completion of an advertised or negotiated sale acceptable to us.

§ 152.13 If I am a member of the Five Civilized Tribes, what happens when I apply for removal of restrictions under section 2(a) of the Act of August 11, 1955?

(a) If we determine that you are competent, we will issue an order removing restrictions having the effect stated in § 152.16.

(b) If your application is rejected, this action is not subject to administrative appeal.

(c) If the Secretary rejects, or takes no action within 90 days of the application date, you may apply to the State district court in the county in which you reside. If that State district court issues an order, it will have the effect stated in § 152.16.

§ 152.14 If I am a member of the Five Civilized Tribes, can the restrictions be removed from my land without an application?

(a) Yes. When you are determined to be competent, section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the removal of restrictions on property belonging to members of the Five Civilized Tribes. The Secretary will issue an order removing restrictions without an application. We will tell you in a letter that we intend to issue an order removing restrictions 30 days after the date of the letter.

(b) This decision may be appealed under part 2 of this chapter within the 30 days.

(c) All administrative appeals will postpone the issuance of this order.

(d) An order removing restrictions will be issued when:

(1) The decision is not appealed within 30 days after the date of the notice;

(2) Any dismissal of an appeal is not appealed within the prescribed time limit; or

(3) The final appeal is dismissed.

§ 152.15 If I am a member of the Five Civilized Tribes, what happens when a removal of restrictions is issued to me without an application?

When an order removing restrictions is issued, under § 152.14:

(a) A copy of the order will be delivered to you, or any person acting on your behalf, and the Board of County Commissioners for the county in which you reside.

(b) Under the terms the Act of August 11,1955 (69 Stat. 66), the Secretary will tell you and the Board of County Commissioners in a letter that you and/or the Board have the right to appeal within six months of the date of this letter. The appeal must be to the State district court for the district in which you reside. The appeal will stay the effective date of the order until such proceedings are concluded. If the State district court dismisses the appeal, the order will become effective six months after the date of the letter. The effect of the order is described in § 152.16.

§ 152.16 If I am a member of the Five Civilized Tribes, what is the effect of an order removing restrictions from my land under the Act of August 11, 1955 (69 Stat. 666)?

(a) The effective date will remove all jurisdiction and supervision of the Bureau of Indian Affairs.

(b) Full ownership and control of money and property will be given to you, and the Secretary will issue title documents if necessary.

(c) The Secretary may make provisions to insure repayment of money lent to you by the Federal Government or by an Indian tribe.

(d) The interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order becomes effective will be preserved.

Sales, Exchanges, and Conveyances of Trust or Restricted Lands

§ 152.17 Can I sell, exchange, or otherwise convey my Indian land?

Trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by you with the approval of the Secretary or by the Secretary with your consent under the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; U.S.C. 464); and May 14, 1948

(62 Stat. 236; 25 U.S.C. 483); and other authorizing acts.

§ 152.18 Can a natural guardian or person designated by the Secretary sell my Indian land?

(a) Under the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), we may sell trust or restricted land belonging to:

(1) A minor, with the consent of the natural guardian of the minor;

(2) Indian orphans without a natural guardian; and

(3) Indians who are non compos mentis or otherwise under legal disability.

(b) The authority contained in the Act of May 29, 1908 is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.19 Can fiduciaries sell my Indian land?

With our approval or consent, guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may convey trust or restricted land belonging to Indians who are minors, no compos mentis, or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

§ 152.20 Can the Secretary sell land owned by more than one person?

Under the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), lands or all interests in land may be sold if the Secretary determines that one or more of the heirs who have inherited trust land are incapable of managing their own affairs. This authority does not apply to lands authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.21 Can a tribe sell or exchange tribal land?

Certain tribal land may be sold or exchanged under the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608–608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a–2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960) 74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389); January 12, 1983 (96 Stat. 2517, 25 U.S.C. 2201), and under other authorizing acts. Except as otherwise provided by law, the regulations in this part 152 apply to sale or exchanges of tribal land.

§ 152.22 Is the Secretary's approval necessary to convey individual-owned trust or restricted lands or lands owned by a tribe?

(a) *Individual lands.* Yes, except inherited lands of the Five Civilized Tribes, see § 152.12. Influencing an Indian to execute an instrument purporting to convey any interest in trust land, or the offering of any instrument for record is prohibited, and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Yes, except where acts of Congress authorize sales without approval. (See 25 U.S.C. 177.)

§ 152.23 Where do I file an application for sale, exchange, or gift?

Applications must be filed in a form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if the transaction appears to be in the long-range best interest of the owner or owners, or under conditions in § 152.25(d).

§ 152.24 Is an appraisal necessary?

Yes. Except as otherwise provided by the Secretary, we must do an appraisal to determine the fair market value before making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 152.25 Can I negotiate a sale, gift, or exchange of my trust or restricted lands?

Sales, exchanges, and gifts specifically described in paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales must be by advertised sale, or as determined by the Secretary. With the approval of the Secretary:

(a) *Consideration not less than the appraised fair market value.* You may negotiate and sell trust or restricted land for not less than the appraised fair market value when:

(1) The sale is to the United States, States, or political subdivisions, or sale for a public purpose.

(2) The sale is to the tribe or another Indian; or

(3) The Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* You may exchange trust or restricted land in combination with other things of value. The value you receive in the exchange must be substantially equal to the appraised fair market value of the consideration given by you.

(c) *Sale to co-owners.* You may negotiate and sell trust or restricted land to a co-owner. The consideration may be less than the appraised fair market value, if we determine there is a special relationship between the co-owners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* You may convey trust or restricted land for less than the appraised fair market value or for no consideration, when:

(1) The prospective grantee is your spouse, brother, sister, lineal ancestor of Indian blood, or lineal descendant;

(2) Some other special relationship exists between you and grantee; or

(3) The Secretary determines that special circumstances exist that warrant the approval of the conveyance.

§ 152.26 How is my land advertised for sale?

(a) Once your application is approved, a notice of sale will be published not less than 30 days prior to the date fixed for the sale. A shorter period may be authorized by the Secretary.

(b) The notice of sale will include:

(1) Terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedures set out in § 152.27(b)(2);

(2) Where and how bids must be submitted;

(3) A warning to all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and

(4) Description of tracts, all reservations to which title will be subject, any restrictions and encumbrances of record with the Bureau of Indian Affairs, and any other information that may improve sale prospects.

§ 152.27 What procedures are followed for an advertised sale?

(a) Advertised sales are by sealed bids except as provided in this paragraph:

(1) Bids, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of these negotiable instruments at the bidder's risk. Tribes submitting bids under this paragraph may guarantee the required 10 percent deposit by an appropriate resolution.

(2) The sealed envelopes containing the bids will be publicly opened at the

time fixed for sale. The bids will be announced and appropriately recorded.

(b) when the Secretary recognizes that a tribe or a tribal member has a valid interest in acquiring the trust or restricted lands offered for sale, the following apply:

(1) With the consent of the owner and when the notice of sale so states, the tribe or tribal members have the right to meet the high bid.

(2) An oral auction may be held following the bid opening if:

(i) The tribe is not the highest bidder;

(ii) One or more acceptable sealed bids are received; or

(iii) When so stated in the notice of sale.

(c) Bidding in the auction will be limited to the tribe and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction, the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 152.28 What happens after the bid closing?

(a) The apparent highest acceptable bid will be publicly announced. The deposits submitted by unsuccessful bidders will be returned immediately. The apparent successful bidder's deposit will be held in a special account.

(b) If the highest bid received is less than the appraised fair market value of the land, the Secretary, with the consent of the owner, may accept that bid if:

(1) The amount approximates said appraised fair market value; and

(2) The amount is the highest price that may be realized.

(c) The Secretary will notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) The Secretary may extend the time for payment of the balance due upon showing of cause.

(2) If the balance due is not paid within the time allowed, the bid will be rejected, and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid. The fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government, and that agency has given the Secretary a commitment that the balance due will be paid when the fee patent is issued.

§ 152.29 Can the Secretary reject bids or disapprove a sale?

Yes. The Secretary reserves the right to reject any and all bids before or after the award or prior to the issuance of a patent or delivery of a deed, when it has been determined the rejection is in the best interests of the Indian owner.

§ 152.30 Can employees of Indian Affairs bid?

No. No person employed in Indian Affairs will directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of part 140 of this chapter (see 25 U.S.C. 68 and 441).

§ 152.31 Who pays for the cost of conveyance and fees?

(a) Under the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount collected will be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of the section.

(1) The amount of the fee will be $22.50 for each transaction.

(2) We may waive or reduce the fee to a lesser amount if justified.

(b) Subject to our approval, an alternate schedule of fees may be established if the cost of the work performed or expenses incurred are to be paid with tribal funds. Part of the fees may be credited to the tribe if appropriate.

(c) The collection of cost from the tribe may be waived if the tribe is the purchaser.

§ 152.32 Who pays irrigation fees and payments?

Under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. This statute applies only where the land is owned by Indians either in trust or restricted status.

(a) Any person, whether Indian or non-Indian, acquiring Indian lands that are a part of an Indian Irrigation project must enter into an agreement to:

(1) Pay the pro rata share of the construction of the project chargeable to the land;

(2) Pay all construction costs that accrue in the future; and

(3) Pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for the payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

Partitions in Kind of Inherited Allotments

§ 152.33 Can I partition my Indian lands?

(a) Land may be partitioned without an application if we find that any one or more inherited trust allotments are capable of partition in kind to the advantage of the heirs regardless of their competency. Patents in fee will be issued to the competent heirs for the lands set apart to them. The trust period will terminate in accordance with the terms of the original patent or order of extension of the trust period set out in the patent. (Act of May 18, 1916, (39 Stat. 127; 25 U.S.C. 378)). The authority contained in the Act of May 18, 1916, does not apply to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) Heirs of a deceased allottee may submit a written application on an approved form for a partition of their trust or restricted land. If we approve the partition, new patents or deeds will be issued to the heirs for the portions set aside to them. If title to the allotment is held as restricted fee, a partition may be accomplished by the heirs executing approved deeds to the other heirs for their respective portions.

Mortgages and Deeds of Trust To Secure Loans to Indians

§ 152.34 Can I mortgage my land?

Yes. With the Secretary's approval, you may execute a mortgage or deed of trust to your land. The Secretary will secure appraisal information prior to approval of the mortgage or deed of trust. Such lands will be subject to foreclosure or sale, according to the terms of the mortgage or deed of trust, and in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, you will be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956) (70 Stat. 62; 25 U.S.C. 483a).

§ 152.35 Can I make a sale on a deferred payment plan?

Yes, when you and purchaser desire. The terms will be set out in a memorandum of sale which constitutes a contract for payment in full and delivery of title. The executed deed will be held by the superintendent to be delivered only upon full compliance with the terms of sale. Request for fee patent will be made only upon full compliance with the terms of the sale. As required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); the terms of the sale will require the purchaser to pay not less than 10 percent of the purchase price in advance. Terms for the payment of the remaining installment, plus interest, must be acceptable to the Secretary and the Indian owner. If the purchaser defaults on any deferred payment plan in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

Denials of Applications

§ 152.36 When does the Secretary deny approval of my application?

The Secretary denies any request under this part if a determination shows that it will adversely affect the best interest of other Indians, or the tribe.

§ 152.37 Am I notified of a denial?

Yes, the Secretary makes denials in a written letter. You have the right to appeal the decision under part 2 of this chapter.

Receiving Information

§ 152.38 Who receives information regarding status of applications for patents in fee, certificates of competency, or orders removing restrictions of trust or restricted Indian lands?

(a) The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions must be disclosed to:

(1) Employees of the Department of the Interior whose duties require that the information be disclosed to them;

(2) The applicant or his attorney, upon request;

(3) Members of Congress on behalf of the applicant; and

(4) Owners of trust or restricted land whose property would be affected by the termination of trust or restricted status of the land covered by the application.

(b) All other persons, upon request and only after a patent in fee, certificate of competency, or an order removing restrictions has been issued, according to the following timeframes:

(1) 15 days after the fee patent has been issued by the Bureau of Land Management;

(2) 15 days after issuance of a certificate of competency or order removing restrictions; or

(3) After the application has been rejected, and you have been notified.

Dated: June 10, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16037 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–02–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Sixth Meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the dates of the sixth meeting of the "Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act" (the Committee). A Notice of Intent to form the Committee was published in the **Federal Register** on August 31, 1995, 60 FR 45388, and a Notice of Establishment of the Committee was published in the **Federal Register** on October 20, 1995, 60 FR 54207.

DATES: The sixth meeting will be held on July 23–24, 1996, beginning at 10:00 a.m. on July 23. It is anticipated that the meeting will last for two days. The session of July 24, 1996 will commence at 9:00 a.m.

ADDRESSES: The meeting will be held at the EEOC Headquarters, 1801 L Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, N.W., Washington, D.C. 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: All Committee meetings, including the meeting of July 23–24, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda

At the meeting, the Committee will continue to discuss the unsupervised waiver legal issues that will be considered by the Committee in drafting a recommended notice of proposed rulemaking for EEOC approval.

Dated: June 25, 1996

Frances M. Hart,

Executive Officer.

[FR Doc. 96–16758 Filed 7–1–96; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Implementation of the Local Competition Provisions of 1996 Telecommunications Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment date.

SUMMARY: The Public Notice extends an additional Comment opportunity in CC Docket 96–98 in order to allow parties to that proceeding to comment on a staff-prepared working copy of an industry demand and supply simulation model. The model, using publicly-available, industry-wide information, allows users to simulate the relative impact of particular changes in the industry.

DATES: Comments are due on or before July 8, 1996. (No reply comments allowed).

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers at (202) 418–0952.

SUPPLEMENTARY INFORMATION:

[DA 96–1030; IAD 96–176]

Supplemental Comment Period Extended for Local Competition Proceeding, CC Docket 96–98

Released June 25, 1996.

1. On June 17, 1996, the FCC's Industry Analysis Division, Common Carrier Bureau, and the Competition Division, Office of General Counsel, released a staff model of the telecommunications industry which allows model users to calculate a variety of outputs from nearly 200 specifications (News Release, "FCC Staff Releases Working Copy of an Industry Demand & Supply Simulation Model," released June 17, 1996.) The staff model allows the user to specify growth rates, pricing trends, demand elasticities and cost relationships to simulate effects in traditional industry segments. The staff model, using publicly-available, industry-wide information, allows the user to simulate the relative impact of particular changes in the industry. On June 20, 1996, the Common Carrier Bureau, on delegated authority, issued a Public Notice that announced that a copy of the staff model had been placed in the public file in CC Docket No. 96–98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Parties were requested to file Comments on the staff model in that proceeding no later than Monday, July 1, 1996. (Public Notice, "Supplemental Comment Period Designated for Local Competition Proceeding, CC Docket 96–98," DA 96–1007, released June 20, 1996.) (61 FR 32766, June 25, 1996).

2. On June 21, 1996, Cox Communications, Inc. ("Cox") filed a Motion for Extension of Time seeking an extension, to July 8, 1996, to file its supplemental comments about the staff model.[1] In its petition, Cox argues, *inter alia*, that the comment period is insufficient to give parties a meaningful opportunity to analyze and comment on the staff model.[2]

3. The Commission faces severe time constraints, imposed by Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. § 251, to resolve the interconnection proceeding within the timeframe prescribed. Nevertheless, in order to afford commenters in CC Docket No. 96–98 as much opportunity as possible to analyze and utilize the staff model, a limited extension of the supplemental comment period is authorized. Parties who wish to comment on the model, use the model, create variations of the model, or file models of their own, in that proceeding are requested to file Comments no later than Monday, July 8, 1996. As stated in the June 20 Public Notice, there will be no Reply Comment filing opportunity.

4. Copies of the model may be purchased by calling International Transcription Services, Inc. (ITS) at (202) 857–3800. The model also can be downloaded from the Common Carrier Bureau's home page on the World Wide Web. The home page can be accessed directly (http://www.fcc.gov/ccb.html) or through a direct link from the main FCC home page (http://www.fcc.gov). The model also can be downloaded from the FCC-State Link computer bulletin board at (202) 418–0241 [BBS file name: MODELV30.ZIP].

For further information, contact Thomas J. Beers at (202) 418–0952 (e-mail: tbeers@fcc.gov). For further information about the model, contact Jim Lande at (202) 418–0498 (e-mail: jlande@fcc.gov) or Doron Fertig at (202) 418–1869 (e-mail: dfertig@fcc.gov).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16760 Filed 6–28–96; 8:45 am]

BILLING CODE 6712–01–P

[1] Motion for Extension of Time of Cox Communications, Inc. ("Cox Petition"), CC Docket No. 96–98 (filed June 21, 1996). On June 24, 1996, Cox supplemented its petition with an Attachment to the original motion. *See* Affidavit of Joshua E. Fine In Support of Cox Communications, Inc. Motion for Extension of Time (filed June 24, 1996).

[2] Cox Petition, 2–5.

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47 CFR Part 73

[MM Docket No. 96–134; RM–8817]

Radio Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by TV–32, Inc. requesting the substitution of UHF Channel 29 for UHF Channel 32 at Kansas City, Missouri, and modification of the construction permit for Station KCWB to specify operation on Channel 29. The coordinates for Channel 29 at Kansas City are 39–05–01 and 94–30–57. We shall propose to modify the construction permit for Station KCWB and will not accept competing expressions of interest for the use of the channel. To accommodate the allotment of Channel 29 at Kansas City, we shall also propose to change the reference site coordinates for vacant Channel *22 at St. Joseph, Missouri, from 39–46–00 and 94–50–18 to 39–54–40 and 94–50–18.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Meredith S. Senter, Jr., Renee L. Roland, Leventhal, Senter & Lerman, 2000 K. Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–134, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16766 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–135; RM–8825]

Radio Broadcasting Services; Mena, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Wendell Harlan requesting the

allotment of Channel 287C3 to Mena, Arkansas, as that community's third local FM transmission service. Coordinates used for Channel 287C3 at Mena, Arkansas, are 34–38–46 and 94–16–53.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Wendell Harlan, 3906 Hwy 375 West, P.O. Box 1426, Mena, AR 71953.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–135, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16765 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No.96–136; RM–8816]

Radio Broadcasting Services; Mililani Town, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by James Boersema seeking the allotment of UHF television Channel 60 to Mililani Town, Hawaii, as that locality's first local television service. Coordinates for this proposal are 21–27–29 North Latitude and 158–01–04 West Longitude. Although the Commission has imposed a freeze on TV allotments in certain metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James Boersema, 733 Bishop Street, #170–460, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–136, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16764 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No.96–138, RM–8822]

Radio Broadcasting Services; Shell Knob, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Galen Gilbert proposing the allotment of Channel 249A at Shell Knob, Missouri, as that community's first local service. The coordinates for Channel 249A are 36–42–51 and 93–34–36. There is a site restriction 10.5 kilometers northeast of the community. Petitioner has been requested to provide information demonstrating that Shell Knob qualifies as a community for allotment purposes. Since Shell Knob is located inside the Mark Twain National Forest, petitioner has also been requested to provide information showing a site is available that will provide city grade coverage to the community.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 1447, Mount Pleasant, South Carolina 29465.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No.96–138, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors,

International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16763 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 76

[CS Docket No. 96–139; DA 96–1012]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Houston television market to include the communities of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas. This action is taken at the request of Pray, Inc., licensee of television station KRTW(TV), Channel 57 (presently KVVV), Baytown, Texas and it is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before August 26. 1996 and reply comments are due on or before September 16, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Vanessa Stallings, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket 96–139, adopted June 21, 1996 and released June 24, 1996.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rulemaking

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the communities of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe to the Houston television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Houston, Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that "hyphenation" of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe to the Houston, Texas television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 26, 1996 and reply comments on or before September 16, 1996. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 96–16819 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[CS Docket No. 96–133, FCC 96–265]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in the market for the delivery of video programming pursuant to Section 628(g) of the Communications Act of 1934, as amended. On June 12, 1996, the Commission adopted a *Notice of Inquiry* to solicit information from the public for use in preparing the competition report that is to be submitted to Congress in December 1996. The *Notice of Inquiry* will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due by July 19, 1996, and reply comments are due by August 19, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau, (202) 418–7200, or Jeffrey Lanning, Office of the General Counsel, (202) 418–1880.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 96–133, FCC 96–265, adopted June 12, 1996, and released June 13, 1996. The complete text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 1900 M Street, N.W., Washington, D.C. 20054.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 548(g), requires the Commission to deliver an annual report to Congress on the status of competition in the market for the delivery of video programming. The Commission submitted its first two reports to Congress in September 1994 and December 1995, respectively.

2. The *Notice of Inquiry* ("*NOI*") is designed to solicit comments and information that the Commission can use to prepare its 1996 Competition Report. Specifically, the *NOI* requests information on the cable industry, existing and potential competitors to cable systems, barriers to entry by new competitors, technological advances and the effects of the 1996 Act on competition in the market for the delivery of video programming. The Commission expects to use the information that is submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings. The *NOI* highlights a wide range of competitive issues, and offers parties an opportunity to submit comments on these issues, as well as any other information they believe is relevant to an evaluation of competition in the market for the delivery of video programming.

3. The *NOI* begins with an overview of the 1996 Act, including a summary of the provisions that may promote competition among multichannel video programming distributors ("MVPDs"). These provisions include: (1) repeal of the cable-telco cross-ownership ban; (2) creation of the open video system ("OVS") option for local exchange carrier ("LEC") entry into the market for the delivery of video programming; (3) deregulation of small cable systems; (4) expansion of the definition of effective competition; and (5) elimination under a number of circumstances of the uniform cable service rate structure requirement for similarly situated subscribers.

4. The *NOI* then seeks information and comment on the status of the different MVPDs that serve subscribers in the market for the delivery of video programming and the changes that have occurred in the past year. The MVPDs include cable television (including overbuilds), multipoint multichannel distribution service ("MMDS" or "wireless cable"), direct broadcast satellites ("DBS") and home satellite dishes ("HSDs"), and satellite master antenna television ("SMATV") systems. The Commission also seeks information on potential rivals for incumbent cable systems, such as open video systems built by LECs.

5. The *NOI* asks a variety of questions concerning each of these video service providers and solicits information regarding barriers to entry and the nature of the services they provide. The *NOI* also indicates that the Commission intends to examine the effects on competition of broadcast television service, video cassette recorders ("VCRs") and interactive video and data services ("IVDS").

6. The Commission observes that there are technological advances that may affect the structure of the market for the delivery of video programming. In this regard, the *NOI* solicits information on digital compression, hybridization of different transmission media, and developments in set-top boxes and switched digital services.

7. In the *NOI*, the Commission requests comment on the structure of the market for the delivery of video programming and the effect of this structure on competition. The Commission expects to explore the status of horizontal concentration and vertical integration in the cable television industry and to analyze the market structure conditions that may affect competition in the market for the delivery of video programming. Information is requested also to help the Commission evaluate the effects on competition of the Commission's program access, program carriage, channel occupancy, and leased commercial access rules.

8. The *NOI* also requests comment on the current effects of actual or potential competition in local markets where consumers have, or soon will have, a choice between MVPDs. The Commission further requests information on any existing or potential impediments to entry into the market for the delivery of video programming. Finally, comment is sought on the outlook for competition in the future.

Administrative Matters

Ex Parte

9. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR § 1.1204(a)(4).

Comment Dates

10. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before July 19, 1996, and reply comments on or before

August 19, 1996. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Ordering Clauses

11. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16817 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 5]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to Form a Negotiated Rulemaking Committee.

SUMMARY: RSPA proposes to establish a Negotiated Rulemaking Committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act of 1992 to develop a recommended rule on the qualification of personnel performing certain safety-related functions for pipelines subject to 49 CFR Parts 192 and 195. The Committee will adopt its recommendations through a negotiation process. The Committee will be composed of persons who represent the interests affected by the rule, such as gas pipeline operators, hazardous liquid and carbon dioxide pipeline operators, members of state and federal governments, and persons from the public sector. The purpose of this NOI is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the Committee.

DATES: RSPA must receive written comments and requests for representation or membership by August 1, 1996.

ADDRESSES: Written comments should be submitted in duplicate to the RSPA Dockets Office, attention Verdell Simpkins, Room 8421, Nassif building, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Eben M. Wyman, (202) 366–0918, regarding the subject matter of this NOI; or the Dockets Unit, (202) 366–4453, for copies of this NOI or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of Proposed Rulemaking (NPRM)

An NPRM titled "Qualification of Pipeline Personnel" was published on August 3, 1994 (Docket No. PS–94; 59 FR 39506). The NPRM proposed qualification standards for personnel who perform, or supervise persons performing, regulated operation, maintenance, and emergency-response functions. The purpose of the NPRM was to improve pipeline safety by requiring operators to assure the competency of affected personnel through training, testing, and periodic refresher training.

Written comments to the NPRM.

RSPA received 131 comments to the docket that expressed a wide variety of interests and concerns. Commenters stated that the NPRM was too prescriptive and that the many references to training requirements should be modified to place the focus of the NPRM on actual qualification, not the methods of achieving it. Most commenters asserted that the NPRM should have proposed a more general approach of broad requirements for persons performing "safety related" functions. Following review of the extensive comments to the NPRM, RSPA decided that a regulatory process other than traditional rulemaking would better address the issues surrounding operator qualifications.

Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) were established by statute to evaluate proposed pipeline safety regulations. The committees are required to report on the technical feasibility, reasonableness, and practicability of the proposals.

Following consideration of the issues of this proposed rulemaking, both the TPSSC and THLPSSC expressed their disapproval of the NPRM. Instead the Committees presented several motions calling for amendments to the proposal. Those motions generally reflected written comments submitted to the Qualification of Pipeline Personnel proposed rulemaking.

Petition for Withdrawal

On December 1, 1995, the American Gas Association (AGA), the American Public Gas Association (APGA), and the Southern Gas Association (SGA) filed a petition for withdrawal of the August 3, 1994, NPRM and offered an alternative proposal.

Notice of withdrawal of NPRM

Along with this NOI, RSPA is publishing elsewhere in this issue of the **Federal Register** a document withdrawing the NPRM in Docket No. PS–94. RSPA briefly indicated the negotiated rulemaking process was an alternative method of rulemaking for use in this regulatory action. RSPA contends that a negotiated rulemaking process will provide the appropriate level of communication among interested parties that is needed to resolve the controversies surrounding the qualification issues.

II. Regulatory Negotiation

It can be difficult for an agency to craft effective regulatory solutions to certain problems. In the typical rulemaking process, the participants often develop adversarial relationships that prevent effective communication and creative solutions. The exchange of ideas that may lead to solutions acceptable to all interested groups often does not occur in the traditional notice and comment system. As the Administrative Conference of the United States (ACUS) noted in its Recommendation 82–4:

> Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

47 FR 30708; June 18, 1982.

The thrust of this recommendation is that representatives of affected interests should be assembled to discuss the issue or hazard and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group would reconvene to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the need for petitions for reconsideration and litigation that often follow promulgation of a final rule.

The movement toward negotiated rulemaking gained impetus with enactment of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.* More recently, President Clinton issued Executive Order 12866 (EO) (58 FR 51735, October 4, 1993), which states the need to reform the current regulatory process into one that is effective, consistent, and understandable. The objectives of the EO are:

> To reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.

Id. Section 6(a) of the EO charges government agencies with providing the public meaningful participation in the regulatory process:

> In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation . . . Each agency is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Id. at 51740.

Negotiated rulemakings have been used successfully by the Department of Transportation, including the Federal Aviation Administration, the United States Coast Guard, the Federal Highway Administration, and the National Highway Traffic Safety Administration. In addition, the Environmental Protection Agency, and the Occupational Safety and Health Administration have successfully used the process.

RSPA now intends to use this process for the first time, and does so with enthusiasm and high expectations. RSPA welcomes the opportunity to work with those who will be affected directly by a personnel qualification rule, and is confident that the agency and its partners will benefit from the process by creating an effective and reasonable regulation.

Section 563(a) of the Negotiated Rulemaking Act and recommends that an agency consider whether:

(1) There is a need for the rule;
(2) There is a limited number of identifiable interests;
(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;
(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;
(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;
(6) The agency has adequate resources and is willing to commit such resources to the process; and
(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

RSPA believes that these criteria have been met with respect to pipeline safety issues.

RSPA would charter a negotiated rulemaking committee (Committee) under the Federal Advisory Committee Act (FACA), 5 USCS App. 1, and would be represented on the Committee to take an active part in the negotiations. However, pursuant to section 566(c) of the Negotiated Rulemaking Act, the person(s) designated to represent RSPA would not facilitate or otherwise chair the proceedings. RSPA is committed to this process and is quite optimistic that it will result in the issuance of an NPRM and final rule that will be acceptable to the members of the Committee. Because of the mandate to issue a rule on this subject, RSPA is prepared to go forward with an NPRM that is not the product of the negotiations in the unlikely event the negotiation fails.

III. Procedures and Guidelines

The following proposed procedures and guidelines would apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

(A) *Facilitator:* RSPA is considering persons to serve as facilitator for the negotiating group. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The facilitator may ask members to submit additional information or to reconsider their position. RSPA has contacted mediation organizations for candidates.

(B) *Feasibility:* RSPA has examined the issues and interests involved to determine whether it is possible to reach agreement on: (a) individuals to represent those interests; (b) the preliminary scope of the issues to be addressed; and (c) a schedule for developing a notice of proposed rulemaking. On the basis of the history of this issue and our preliminary inquiry, RSPA believes that regulatory negotiation can be successful in developing a workable proposal for a notice of proposed rulemaking and a final rule, and that the potential participants listed below would adequately represent the affected interests.

(C) *Requests for Representation:* The following have been tentatively identified as representing interests that are likely to be significantly affected by the rule:

(1) Small pipeline operators;
(2) Large pipeline operators;
(3) State pipeline safety representatives;
(4) Representatives of other interested Federal agencies;
(5) Public environmental organizations;
(6) Other interested public organizations;
(7) Representatives of labor unions; and
(8) RSPA's Office of Pipeline Safety.

RSPA proposes that persons or organizations selected by the various interests be named to the Committee. The following organizations have been tentatively identified as organizations that would serve on the committee:

(1) American Gas Association;
(2) American Petroleum Institute;
(3) Interstate Natural Gas Association of America;
(4) American Public Gas Association;
(5) National Association of Pipeline Safety Representatives;
(6) National Association of State Fire Marshals;
(7) Midwest Gas Association (a training organization);
(8) Environmental Defense Fund; and
(9) RSPA's Office of Pipeline Safety.

Each organization would send a representative to serve on the committee. RSPA will consider applications for representation from any interests not appropriately represented by those named in this list. Please identify such interests if they exist.

Each application for membership or nomination to the Committee should include: (i) the name of the applicant or nominee and the interests such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent; (iii) a written commitment that the applicant

or nominee would participate in good faith; and (iv) the reasons representatives identified in the Notice do not accurately portray the interests affected by the rule. If an additional person or interest requests membership or representation on the Committee, RSPA shall determine (i) whether that interest will be substantially affected by the rule, (ii) if such interest would be adequately represented by an individual already on the Committee, and (iii) whether the requester should be added to the group or whether interests can be consolidated to provide adequate representation. Please note that each individual or organization affected by a final rule need not have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced. Individuals who are not part of the Committee may attend sessions and confer with or provide their views to Committee members.

(D) *Good Faith:* Participants must be committed to negotiate in good faith. Therefore, it is important that senior individuals within each interest group be designated to represent that interest. No individual will be required to "bind" the interests he or she represents, but the individual should be at a high enough level to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(E) *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this NOI to indicate our intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants. The first meeting is tentatively scheduled for August 28, 1996.

(F) *Final Notification:* After evaluating comments received as a result of this NOI, RSPA will issue a final document announcing the establishment of the Federal advisory committee, unless it determines that such action is inappropriate in light of comments received, and the composition of the Committee. After the Committee is chartered the negotiations would begin.

(G) *Administrative Support and Meetings:* Staff support would be provided by RSPA and meetings would take place in Washington, D. C., unless agreed otherwise by the Committee.

(H) *Tentative Schedule:* If the Committee is established and selected, RSPA will publish a schedule for the first meeting in the **Federal Register**. The first meeting will focus on procedural matters, including dates, times, and locations of future meetings. Notice of subsequent meetings would also be published in the **Federal Register**.

RSPA expects the Committee to reach consensus and prepare a report recommending a proposed rule within eight months of the first meeting. However, if unforeseen delays occur, the Administrator may agree to an extension of time if the consensus of the Committee is that additional time will result in agreement. The process may end earlier if the facilitator so recommends.

(I) *Committee Procedures:* Under the general guidance of the facilitator, and subject to legal requirements, the Committee would establish detailed procedures for the meetings.

(J) *Record of Meetings:* In accordance with FACA's requirements, RSPA would keep a record of all Committee meetings. This record would be placed in the public docket for this rulemaking. Meetings of the Committee would generally be open to the public.

(K) *Consensus:* The goal of the negotiating process is consensus. RSPA proposes that the Committee would develop its own definition of consensus, which may include unanimity, a simple majority, or substantial agreement such that no member will disapprove the final recommendation of the Committee. However, if the Committee does not develop its own definition, consensus shall be unanimous concurrence.

(L) *Notice of Proposed Rulemaking:* The Committee's first objective is to prepare a report containing a notice of proposed rulemaking, preamble, and economic evaluation. If consensus is not obtained on some issues, the report should identify the areas of agreement and disagreement, and explanations for any disagreement. It is expected that participants will address cost/benefit, paperwork reduction, and regulatory flexibility requirements. RSPA would prepare an economic assessment if appropriate.

RSPA would accept the Committee proposal unless it is inconsistent with statutory authority of the agency or other legal requirements or does not, in the agency's view, adequately address the subject matter. In that event, the preamble to the NPRM would explain the reasons for its decision.

(M) *Key Issues for Negotiation:* RSPA has reviewed written comments, petitions, and pipeline operating practices, and has engaged in extensive dialogue on the issue of qualification of pipeline personnel. Based on this information and rulemaking requirements, RSPA has tentatively identified major issues that should be considered in this negotiated rulemaking. Issues related to operator qualification not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. Comments are invited concerning the appropriateness of these issues for consideration and whether other issues should be added:

(1) *Covered functions.* What is the definition of a covered function? What areas of an operator's pipeline system be covered by this rule? Should these be the specific duties named in the NPRM, or should a more general approach be implemented to describe what functions will be covered?

(2) *Level of proficiency.* What level of skill must be obtained to achieve qualification? How will this be measured in evaluating an employee's qualification?

(3) *Supervisory persons.* What is the definition of a supervisory position? What criteria must be maintained to allow one to "supervise" unqualified personnel performing covered functions?

(5) *Personnel to be qualified.* Which employees should be subject to this rule? How should contractor personnel qualification be addressed? How will small gas operators and master meter systems be required to comply?

(6) *Instructors.* Who will be responsible for qualifying unqualified personnel? Who will designate these individuals? What skill level will be appropriate for one to serve as an instructor?

(7) *Employee evaluation.* What criteria will be observed in evaluating qualification? Who will conduct this evaluation? How will previous training, testing, work experience, and other methods of qualification be addressed?

(8) *Elements of qualification.* What methods would be appropriate in order to make one qualified? Should these methods be specifically addressed, or should the operator have discretion in choosing how their personnel may become qualified?

(9) *Maintaining qualification.* How can operators ensure that employees performing covered functions maintain

the proper amount of skill to be considered qualified? Are "refresher" courses needed?

(10) *Competency reviews.* In the event an incident or accident is attributed to error, how will the operator reevaluate and monitor an individual's qualification? How long should such a competency review take?

(11) *Recordkeeping.* How will qualification records be maintained? What sorts of qualification schedules (i.e.—training/testing results) must be maintained?

(12) *Compliance dates.* What time frame would be required for implementation of an operator's qualification program? When would personnel evaluation take place? Should time frames be consistent between large and small pipeline operators?

IV. Public Participation

RSPA invites comments on all issues, procedures, guidelines, interests, and suggested participants embodied in this NOI.

Issued in Washington, D.C. June 26, 1996.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–16678 Filed 7–01–96; 8:45 am]

BILLING CODE 4910–60–P

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49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 4]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document is to inform the public that RSPA is withdrawing the Notice of Proposed Rulemaking (NPRM) in Docket No. PS–94 titled "Qualification of Pipeline Personnel." RSPA is required by Congressional mandate to establish requirements on the qualification of personnel conducting certain tasks on a pipeline facility. The NPRM has been subject to considerable scrutiny from many commenters. However, RSPA believes that an alternative method of rulemaking can provide a better forum to establish communications between the interested parties and that a consensus may be achieved on a new rule on the qualification of pipeline personnel. RSPA is publishing elsewhere in this issue of the **Federal Register** a document titled "Notice of Intent to Form a Negotiated Rulemaking Committee" that will provide a complete description of the regulatory alternative.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Eben M. Wyman, (202) 366–0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: A NPRM titled "Qualification of Pipeline Personnel" was published on August 3, 1994 (Docket No. PS–94, Notice 2; 59 FR 39506). The NPRM proposed qualification standards for pipeline personnel who perform, or supervise persons performing, regulated operation, maintenance, and emergency-response functions. The intended effect of the NPRM was to improve pipeline safety by requiring operators to assure the competency of affected personnel through training, testing, and periodic refresher training. Following extensive interaction with the interested parties, this Notice withdraws that proposal from Docket No. PS–94. In light of the many concerns expressed by these parties, RSPA believes that an alternative to traditional rulemaking would be affective to reach consensus on an personnel qualifications rule. RSPA is planning to form a committee that will represent all affected parties to negotiate the many aspects of this issue, and to achieve consensus on a new NPRM to be published in the **Federal Register**. The following discussion of the written comments to the previous NPRM should be helpful in understanding the reasons for this withdrawal.

Discussion of Comments to NPRM and Development of Rules

RSPA received 131 comments to Docket No. PS–94, which expressed a wide variety of interests and concerns. Comments were received from 111 pipeline companies, 8 pipeline-related associations, 4 state and federal agencies, and 8 other interested parties. The following provides a summary of the commenters' issues.

Definitions

Comments were received on certain definitions in the NPRM. The definitions of "qualified administratively" and "supervisory persons" needed clarification, according to many commenters. Commenters alleged that the "qualified administratively" provisions would be redundant, because qualification in any manner would be sufficient, as long as the person was found proficient in performing a covered job function or supervised by a qualified person. Also, commenters noted that the word "supervisor" might be inappropriate because the term can be indicative of a number of positions, including those located away from a job site. These commenters thought the term "supervisor" should be deleted and alternate terms, such as "qualified employee," "lead person," or another term should be used to describe someone who directly oversees personnel performing job functions covered in the NPRM.

Personnel to be Qualified

A number of commenters expressed concern about those who would be subject to this rule. The role of a persons' educational background and work experience in determining qualification was also addressed. Concern was also expressed over whether small gas systems operated by mobile home parks should be subject to a qualification rule. Also, the question of how the proposed rule would cover contractor personnel was the subject of many comments. Most commenters argued that contractors should be held accountable for their own qualification and recordkeeping, because it would be overly burdensome to require pipeline operators to maintain qualification records for contractor personnel. RSPA never proposed to require operators to be responsible for qualifying contractor personnel, only to ensure that they are in fact qualified. This issue is a prime example of why RSPA believes an alternative rulemaking method would provide a better channel of communication to resolve the controversy surrounding this regulatory initiative.

Evaluation and Scheduling

Another major issue was the evaluation of personnel and how past experience, education, and other factors would be considered in assessing qualification. Many comments stressed that the operator or the operator's designee would know the capabilities of their personnel and therefore be in the best position to evaluate and to ensure their qualification. RSPA believes the NPRM's intent was not far from this view, and that, with open communication, consensus can be reached among interested parties.

Qualification Training

The NPRM listed training that would be required if an employee was found to be not qualified. This issue generated many written comments. The commenters alleged that the language in

this section was too prescriptive. Rather than list training requirements, many commenters asserted that RSPA should broaden the scope of the NPRM to cover safety related tasks and allow the operator to decide what those tasks are, who is presently qualified to perform them, and how other persons should obtain that qualification.

Qualification Testing

The comments on this issue were generally consistent with those on training. Specifically, commenters said the situations in which testing is needed to qualify a person and the methods of qualification should be left to the operator's discretion.

Refresher Training/Competency Reviews

RSPA received many comments calling for either revision or deletion of these sections. Commenters stated that requirements for refresher training would be unnecessary and overly burdensome, because many day-to-day tasks would not require a "refresher" in order to be safely performed. Moreover, they said the proposed requirement for a competency review was too prescriptive, and that the language in the NPRM did not indicate the scope of competency reviews. RSPA believes that the scope and methods of review, after an incident occurs due to performance of covered functions, can be properly addressed in an alternative rulemaking process.

Other Issues

Commenters expressed their views on other aspects of the NPRM, such as the proposed recordkeeping requirements. The concept of operator discretion was again the focus of these comments. Commenters felt that as long as proper records are kept and made available upon request, the methods of recordkeeping should be left to those that keep the records. In addition, many commenters suggested that RSPA lengthen the dates for compliance with the NPRM. Finally, a large number of commenters said the costs to comply with the NPRM would far exceed the benefits of the proposal. This was one of the most prevalent comments received.

Negotiated Rulemaking

As previously stated, RSPA is publishing elsewhere in this issue of the **Federal Register** a document titled Notice of Intent to form a *Negotiated Rulemaking Committee* to conduct a negotiated rulemaking as an alternative to the traditional rulemaking process for this regulatory action. RSPA believes these issues can be expeditiously resolved in a negotiated setting.

Issued in Washington, DC, on June 25, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–16677 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 61, No. 128
Tuesday, July 2, 1996

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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agicultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Seedbiotics of Caldwell, Idaho, and exclusive license for all uses in the field of plant seed coatings to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1994, "Non-Separable Starch-Oil Compositions." Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before August 31, 1996.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Seedbiotics has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 96–16774 Filed 7–1–96; 8:45 am]
BILLING CODE 3410–03–M

Natural Resources Conservation Service

Freshwater Bayou Wetlands Phase II (ME–4), Vermilion Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Freshwater Bayou Wetlands Phase II (ME–4), Vermilion Parish, Louisiana.

For further information contact Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

Supplemental information: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is to reduce ponding and the resultant stress to emergent vegetation in the project area. The planned works of improvement include the installation of eight water control structures to provide for drainage of excess water.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bennett C. Landreneau, Assistant State Conservationist/Water Resources, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: June 17, 1996.

Donald W. Gohmert,
State Conservationist.

[FR Doc. 96–16795 Filed 7–1–96; 8:45 am]
BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of the program for Community Facility Loans.

DATES: Comments on this notice must be received by July 2, 1996, to be assured of consideration.

FOR FURTHER INFORMATION, CONTACT: Yoonie MacDonald, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone (202) 720–1490.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.
OMB Number: 0575–0015.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small rural water systems. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Expiration Date of Approval: December 31, 1996.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 10,520.

Estimated Number of Responses per Respondent: 9.06.

Estimated Total Annual Burden on Respondents: 235,854 hours.

Copies of this information collection can be obtained from the Director, Regulations and Paperwork Management Division at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Avenue, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 25, 1996.

Eileen Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 96–16854 Filed 7–01–96; 8:45 am]

BILLING CODE 3410–07–P

Notice of Availability of Funding and Requests for Proposals for the Section 538 Rural Rental Housing Guaranteed Loan Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of the Section 538 Rural Rental Housing Guaranteed Loan program on a demonstration basis. The intended outcome is to produce new affordable rental housing by inviting qualified lenders and eligible housing providers to propose rental complexes that will serve a wide range of incomes and better serve rural residents. The purpose of the demonstration is to encourage proposals that show the feasibility of the program in varying markets and with innovative financing proposals.

DATES: The deadline for receipt of applications is 4:00 PM, Eastern Daylight Savings Time on August 5, 1996. Applications received after such date and time will be returned. Lenders are encouraged to submit applications prior to the end of the period, as applications will be reviewed as they are received. If there are differences between any additional guidelines and this Notice, the requirements of this notice shall prevail. Notification of selected applications will be made by September 1, 1996. Commitments for guarantees will be issued on or before September 16, 1996. If RHS is unable to obligate section 538 funds for guaranteed loans by September 16, 1996, any remaining section 538 funds will be transferred for use prior to September 30, 1996, under the section 515 program. Qualified lenders may call Patrick Sheridan at 202–720–1600 or Obediah G. Baker, Jr., at 202–720–1604 for a copy of the application package. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

ADDRESSES: Applications for participation in the demonstration program must be identified as "Section 538 Demonstration Program" on the envelope or wrapper and be submitted as follows: Director, Multi-family Housing Processing Division, Rural Housing Service, US Department of Agriculture, South Agriculture Building, Room 5337 (stop 0781), 1400 Independence Ave., SW, Washington, DC 20250. Lenders shall submit an original and two copies (a FAX copy is NOT acceptable) of the application to the above address by the application deadline.

FOR FURTHER INFORMATION CONTACT: Patrick Sheridan, Chief, Management Branch, Multi-Family Housing Portfolio Management Division, US Department of Agriculture, South Agriculture Building, Room 5321 (stop 0782), 1400 Independence Ave., SW, Washington, DC 20250. Telephone: (202) 720–1600. (This number is not toll-free.) Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104–120. One of the actions was the authorization of the section 538 Rural Rental Housing Guaranteed Loan Program. The program is intended to reach the needs of rural America by complimenting the section 515 Rural Rental Housing Direct Loan Program. It is anticipated that beneficiaries of the program will be rural residents with low and moderate incomes provided rental housing through the use of loan guarantees. Partnership opportunities exist to utilize the section 538 program with other affordable housing programs.

In Fiscal Year (FY) 1996, approximately $25 million is available under the section 538 demonstration program that was funded under the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996," Public Law 104–37. If the program is extended, final regulations will be developed based on information gathered during administration of the demonstration program.

I. Purpose and Program Summary

Public Law 104–37 provided funds to the Department to implement a multifamily mortgage guarantee demonstration program subject to enactment of authorizing legislation. Public Law 104–120 provided authorization for that program with qualified lenders, the purpose of which is to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by lenders.

The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction. RHS will guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. RHS, in turn, commits to pay up to a maximum of 90 percent of the outstanding principal and interest mortgage balance in the case of default of the loan and filing of a claim.

II. Eligible Housing and Tenants

A loan may be guaranteed only if the loan is generally used for the development costs of housing and related facilities as such term is defined in 7 CFR 1944.205 that also meet the following criteria:

(a) Occupancy Requirements. The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits.

(b) Location. Projects must be located in areas considered eligible as defined in 7 CFR 1944.10. The eligible areas are the same as those eligible under the section 515 program.

(c) Minimum Project Size. Projects must consist of 5 or more rental dwelling units. The site may consist of two or more noncontiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management.

(d) Types of Housing. For the purposes of the demonstration program, only proposals for new construction will be considered. The complexes may contain units that are detached, semi-detached, row houses, or multifamily structures.

(e) Housing Standards. The standards established under 7 CFR part 1944, subpart E for housing and related facilities assisted under section 515 shall generally apply to housing and related facilities, the development costs of which are financed in whole or in part with a loan guaranteed under this program. The Agency anticipates and will guarantee loans in which the fees and the proposed housing may exceed the amounts or size allowances and amenities contained in 7 CFR part 1944, subpart E provided such costs and features are generally found in similar housing proposals for similar income families in the market area. Such costs, features and amenities may include larger units, dishwashers, microwaves, increased and multi-purpose community spaces, developer's fees, etc. For loans where RHS is requested to provide interest credits, the proposed housing must more closely follow the standards contained in 7 CFR part 1944, subpart E.

(f) Tenant Protections. The standards for the treatment of tenants of housing developed using amounts from a loan guaranteed under this program shall incorporate standards for lease and grievance procedures and tenant appeals of adverse actions used under the section 515 Rural Rental Housing Program.

(g) Fair Housing and Equal Opportunity. No person shall be subjected to discrimination because of race, color, religion, sex, disability, familial status, or national origin in the sale, rental or advertising of dwellings, in the provisions of brokerage services, or in the availability of residential real estate related transactions involving RHS or housing in the Rural Development mission area.

(h) Environmental. The environmental requirements established under 7 CFR part 1940, subpart G, for housing and related facilities under the section 515 program shall apply to housing and related facilities under the section 538 program.

(i) Preservation. The housing developed will remain available for occupancy as provided in paragraph II (a) of this notice, for the period of the original term of the loan guaranteed unless the housing is acquired by foreclosure (or instrument in lieu of foreclosure) or the Administrator waives the applicability of such requirement for the loan only after determining, based on objective information, that:

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional Federal assistance will not be necessary as a result of the waiver.

(j) It is anticipated that complexes developed under this program may utilize other affordable housing programs such as the Low Income Housing Tax Credit, tax-exempt or taxable bonds, HOME Investment Partnerships Program (HOME) funds, and other State or locally funded tenant assistance or grants.

III. Loans Eligible for Guarantee

(a) Eligible Borrowers. A loan guaranteed under this program may be made to a nonprofit organization, an agency or body of any State government or political subdivision thereof, or a private entity.

(b) Loan Terms. Each loan guaranteed shall:

(1) Provide for complete amortization by periodic payments to be made for a term not to exceed 40 years;

(2) Involve a fixed rate of interest agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Administrator. For purposes of the demonstration program, the maximum allowable rate is 300 basis points over the 30-year Treasury Bond Rate as published in the Wall Street Journal as of the business day previous to the business day the rate is set;

(3) Involve a principal obligation (including initial service charges, appraisal, inspection, and other reasonable fees) not to exceed:

(i) In the case of a borrower that is a nonprofit organization or an agency or body of any State or local government, up to 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(ii) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph III(b)(3)(i) of this notice, up to 90 percent of the development costs of the housing and related facilities, whichever is less;

(iii) In the case of any borrower, for such part of the property as may be attributable to dwelling use, the

applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act; and

(iv) In the case of a borrower utilizing Low Income Housing Tax Credits, a review will be conducted in conjunction with the applicable tax credit administration entity to determine if the proposal is in conformance with subsidy layering requirements.

(4) Be secured by a first mortgage on the housing and related facilities for which the loan is made, or in the case where the loan upon which the RHS guarantee is requested is not the primary funding source, be secured by a parity lien;

(5) May be a permanent loan or a combination construction and permanent loan; and

(6) For 20 percent of the loans made under the demonstration program, RHS shall provide the borrower with assistance in the form of interest credits to the extent necessary to reduce the rate of interest under paragraph III(b)(2) of this notice to the applicable Federal rate, as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986.

(c) Refinancing of Loans Made Under the Program. Any loan guaranteed under the program may be refinanced and extended in accordance with the terms and conditions that the Agency shall prescribe, but in no event for an additional amount or term that exceeds the limitations under paragraph III(b) of this notice.

(d) Nonassumption. The borrower under a loan that is guaranteed under this program and under which any portion of the principal obligation or interest remains outstanding may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made. Loans guaranteed under this program may be made on a recourse or nonrecourse basis.

(e) Issuance of Guarantee on Permanent Loans. Guarantees may be issued on permanent loans financing new construction once the final certificate of occupancy for the complex has been issued by the appropriate governmental body.

IV. Guarantee Provisions

(a) Lender eligibility. Those lenders currently approved and considered eligible by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development for guaranteed loan programs supporting multifamily housing will be considered approved lenders for this demonstration program. Lenders may use their own underwriting standards and loan terms and conditions with approval from RHS subject to statutory program constraints. In addition, State Housing Finance Agencies (HFAs) are also considered eligible lenders to participate in the demonstration program provided they demonstrate they have the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner.

(b) Extent of Guarantee. RHS will guarantee repayment of an amount not exceeding 90 percent of the total of the amount of the unpaid principal and interest of the loan.

(c) Guarantee Fee. At the time of issuance of a loan guarantee under this program, RHS will collect a fee equal to 1 percent of the guaranteed principal obligation of the loan from the lender.

(d) Transferability of the Guarantee. It is anticipated that loans guaranteed under this program may be sold into the secondary market. The guarantee may be transferred to other eligible lenders with the written consent of RHS.

(e) Payment Under Guarantee.

(1) Notice of default. In the event of default under the loan documents by the borrower on a loan guaranteed, the holder of the guarantee certificate for the loan shall provide written notice of the default to the Administrator.

(2) Lenders will be required to discuss future servicing strategies with RHS prior to proceeding to liquidation. Before any payment under a guarantee is made, the holder of the guarantee certificate must exhaust all reasonable possibilities of collection on the loan guaranteed.

(3) Foreclosure. After receiving notice under paragraph IV(e)(1) of this notice and providing written notice of action to RHS, the holder of the guarantee certificate for the loan may initiate foreclosure proceedings, with the concurrence of RHS, in a court of competent jurisdiction, to obtain possession of the security property. After the court issues a final order authorizing foreclosure on the property, the holder of the certificate shall be entitled to payment by RHS under the guarantee upon:

(i) Conveyance to RHS of title to the security property;

(ii) Submission to RHS of a claim for payment under the guarantee; and

(iii) Assignment to RHS of all the claims of the holder of the guarantee against the borrower or others arising out of the loan transaction or foreclosure proceedings, except claims released with the consent of RHS.

(4) Acceptance of the Assignment by RHS. After receiving notice under paragraph IV (e)(1) of this notice, RHS may accept assignment of the loan if RHS determines that the assignment is in the best interests of the United States. Assignment of a loan under this paragraph shall include conveyance to RHS of all rights and interests arising under the loan, and assignment to RHS of all claims against the borrower or others arising out of the loan transaction. Upon assignment of a loan under this paragraph, the holder of a guarantee for the loan shall be entitled to payment by RHS under the guarantee. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

V. Demonstration Selection Criteria

(a) The Agency intends under the demonstration program to fund varying financing proposals to help determine the areas of need, the types of financing packages possible and the demand in the various eligible market areas. Selection of proposals under this demonstration program will be based on the following criteria:

(1) Flexibility, innovation and variation of funding models;

(2) Partnering and leveraging;

(3) No more than one viable application will be selected in any State (unless the number of viable applications are limited and sufficient funds remain to allow more than one application in any one State); and

(4) Administrator's discretion in order to effectively use funding to best explore program structure and effectiveness consistent with the best interests of the Government.

(b) For 20 percent of the loans made under the demonstration program, RHS shall provide the borrower with interest credits to the extent necessary to reduce the rate of the loan to the applicable Federal rate. Proposals that could be viable with or without interest credits are encouraged to submit an application showing financial and market feasibility under either scenario. Applications proposing to receive interest credit will be selected using the following criteria:

(1) Geographical location with emphasis on smaller rural communities versus larger rural communities;

(2) The most needy communities based on income limits;

(3) Commitments by the applicant to maintain occupancy standards throughout the term of the loan for families with low and moderate

incomes, with a priority at initial occupancy for low income families.

(4) The lowest overall proportional effective subsidy cost to the Government when section 521 interest credit is involved.

VI. Review Criteria

RHS will review each request for participation under the demonstration program to determine if the lender and the proposal meet all the requirements of this notice and the lender demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner. Applications will be reviewed to determine financial feasibility, compliance with cost limitations, and market need of the proposal. RHS will review each application for compliance with subsidy layering requirements of the Act. RHS also reserves the right to negotiate with potential lenders over the scope of the proposal to ensure the best interests of the Government and objectives of the demonstration program are achieved.

It is the policy of RHS to consider environmental quality as equal with economic, social, and other relevant factors in program development and decision making. Proposals which have the potential for adverse impact to protected resources (wetlands, floodplains, and important farmland, for example) will receive low priority, since the brief period of time allocated for obligation of funds may be insufficient for RHS to satisfactorily complete the environmental review process if the proposal has adverse environmental impacts. Therefore, it is important that lenders and applicants submit proposals which minimize the potential to adversely impact the environment.

Since RHS will complete the appropriate environmental review at the field level, the appropriate field office will need certain information from the lender or applicant in order to complete the environmental review. Lenders or applicants who plan to file an application should call *at the earliest date possible* for directions on how to contact the applicable field office.

VII. Other Matters

(a) *Environmental Finding.* A Finding of No Significant Impact with respect to the environment has been made in accordance with RHS regulations at 7 CFR part 1940, subpart G.

(b) *Civil Rights Impact Analysis.* It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, marital or familial status. To ensure that any proposal under this demonstration program complies with these objectives, the RHS approval official will complete Form RECD 2006–38, "Civil Rights Impact Analysis Certification."

(c) *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

(d) *Prohibition Against Advance Information on Funding Decisions.* The requirements of the rule continue to apply until the announcement of the selection of successful applicants. RHS employees involved in the review of applications and in the making of funding decisions are restricted from providing advance information to any person (other than an authorized employee of RHS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

(e) *Paperwork Reduction Act.* The information collection requirements within this notice are covered under OMB Nos. 0575–0042, 0575–0047, 0575–100, 0575–0024, 0575–0029, and 0075–0137.

Dated: June 27, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–16866 Filed 6–27–96; 4:08 pm]

BILLING CODE 3410–07–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Broadwoven Fabrics (Gray) Average Weight and Width Study—MC22T Supplement

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Reinard, Bureau of the Census, Room 2132 FB–4, Washington, DC 20233, Telephone (301) 457–4637.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a study of Broadwoven Fabrics (Gray) Average Weight and Width. This study. is conducted every five years and used to be part of the Census of Manufactures. To minimize the reporting burden and the cost to the Government and also to improve the timeliness of the report, it has been conducted separately for the past six censuses. The results of the survey provide Government and industry analysts with conversion factors to measure the relationship between fabric yardage produced and the volume of fiber consumed. These changes reflect the constant changes in fabric fiber content and machinery used by the textile industry.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 15 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0752.

Form Number: MC–22T.

Type of Review: Regular Review.

Affected Public: Businesses, Other for Profit Institutions.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 1,050.

Estimated Total Annual Cost: 28,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16805 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: Bureau of Export Administration.

Title: Requests for Appointment of a Technical Advisory Committee.

Agency Number: Not applicable.

OMB Number: 0694–0100.

Type of Request: Renewal of an existing collection.

Burden: 5 hours

Number of Respondents: 1.

Avg. Hours Per Response: 5.

Needs and Uses: The Technical Advisory Committees (TACS) were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for the committees. The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations. Any producer of items subject to export controls can make application to the Secretary of Commerce requesting that a committee be established. The information provided is used to determine if the creation of a committee is appropriate.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16827 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: Bureau of Export Administration.

Title: One-Time Report for Foreign Software or Technology Eligible for De Minimis Exclusion.

Form Number: Not applicable.

OMB Approval Number: 0694–0101.

Type of Request: Renewal of an existing collection.

Burden: 250 hours

Number of Respondents: 10.

Avg. Hours Per Response: 25.

Needs and Uses: Any company that is seeking exemption from export controls on foreign software and technology commingled with U.S. software or technology must file a one-time report for the foreign software or technology. The report must include the percentage of relevant values in determining U.S. content, assumptions, and the basis or methodologies for making the percentage calculation. The methodologies must be based upon accounting standards used in the operation of the relevant business, which must be specified in the report. The information will be used to determine if the exclusion applies.

Affected public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion—one report per exclusion requested.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16828 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: Bureau of Export Administration.

Title: Miscellaneous Activities

Form Number: Not applicable.

OMB Approval Number: 0694–0102.

Type of Request: Renewal of an existing collection.

Burden: 10 hours.

Number of Respondents: 2.

Avg. Hours Per Response: 5.

Needs and Uses: On September 30, 1993, the Secretary of Commerce submitted a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to "undertake a comprehensive review of the Export Administration Regulations

to simplify, clarify, and make the regulations more userfriendly." Under this clearance, are three activities. Two of these—"Registration of U.S. Agricultural Commodities for Exemption from Short Supply Limitations" and "Petitions for the Imposition of Monitoring or Controls on Recyclable Metallic Materials" are statutory in nature and must remain in the regulations. The third—the Commerce Control List—became necessary as the rewrite of the regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, Department of Commerce, (202) 482–3272, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16829 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

[A–588–838]

Notice of Antidumping Order: Clad Steel Plate From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski, or Erik Warga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Scope of Order

The scope of this order is all clad [1] steel plate of a width of 600 millimeters ("mm") or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials ("ASTM") specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive.

Clad steel plate within the scope of this order is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with sections 735(a) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") made its final determination that clad steel plate from Japan is being sold at less than fair value (61 FR 21158–21159, May 9, 1996). On June 26, 1996, the International Trade Commission notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from Japan.

Therefore, all unliquidated entries of clad steel plate from Japan, that are entered, or withdrawn from warehouse, for consumption on or after February 28, 1996, the date of the publication of the Department's preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value exceeds the export price for all relevant entries of clad steel plate from Japan. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of Japanese clad steel plate not specifically listed below.

The ad valorem weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
The Japan Steel Company	118.53
All Others	118.53

This notice constitutes the antidumping duty order with respect to clad steel plate from Japan. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 705 (d) of the Act.

Dated: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17008 Filed 7–1 –96; 8:45 am]

BILLING CODE 3510–DS–P

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (e.g., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electrocladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C) (2) (e).

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On June 6, 1996 Fisher Scientific Limited filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination of dumping made by the

Deputy Minister of Revenue Canada concerning bacteriological culture media originating in or exported from the United States of America. The Canadian Section assigned Secretariat File No. CDA–96–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 6, 1996, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 8, 1996);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 22, 1996); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–16845 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D.062596C]

Northwest Atlantic Fisheries Organization Annual Meeting; Public Information and Preparatory Meeting

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

ACTION: Notice of public meeting; request for comments.

SUMMARY: NMFS will hold a public meeting to review issues expected to come before the 18th Annual Meeting of the Northwest Atlantic Fisheries Organization (NAFO), which will occur September 9–13, 1996, in St. Petersburg, Russia, and to receive comments from members of the interested public. Any member of the public is welcome to attend. To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments.

DATES: The public meeting will be held Monday, July 22, 1996, from 10 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn, Logan Airport, 225 McClellan Highway, East Boston, MA (phone 617–569–5159). Written comments should be sent by August 9, 1996, to Will Martin, U.S. Commissioner to NAFO, National Oceanic and Atmospheric Administration, Herbert C. Hoover Building, Room 5809, 14th and Constitution Avenue, NW., Washington, D.C. 20230, with a copy to Dean Swanson, National Marine Fisheries Service, Room 14141, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301–713–2276; Allen E. Peterson, Jr., at 508–548–5123, Ext. 367.

SUPPLEMENTARY INFORMATION: NOAA will host an informal meeting to review the United States accession to NAFO. Officials from NOAA and the U.S. Department of State will discuss steps that have been initiated to join NAFO and preparations for participation in the 18th Annual Meeting of NAFO, which will occur September 9–13, 1996, in St. Petersburg, Russia.

All interested parties are invited to attend this informational meeting and provide comment. For those unable to attend, written comments may be submitted through August 9 (see **ADDRESSES**).

The agenda for the public meeting is as follows:

10:00 Registration (no charge)
10:15 Welcome and Opening Remarks
10:30 What is NAFO?
10:45 U.S. Implementing Legislation
11:00 Current Status of Appointments
11:15 Schedule of Events
11:30 U.S. Activities and Position
12:30 Break
1:30 Review of Morning Issues/ Comments
2:00 Comments/Discussion of possible U.S. Position
3:40 Actions/Assignments
4:00 Adjournment

Dated: June 25, 1996.

Gary Matlock, Ph.D.,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–16788 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 061796E]

Marine Mammals; Permit No. 837 (P771#67)

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 837 submitted by the National Marine Mammal Laboratory has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21688, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Point Way NE, BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On May 6, 1996, notice was published in the **Federal Register** (61 FR 20244) that a modification of permit no. 837, issued

June 4, 1993, had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification adds St. Paul and St. George as locations where roundups are authorized; increases the numbers that may be incidentally harassed, captured, weighed and measured on Bogoslof Island; adds harnesses or epoxy glue as means to attach time wet recorders; increases numbers to be fitted with time wet recorders on St. Paul and St George Islands; and authorizes the use of enemas St. Paul Island and St. George Island.

Dated: June 18, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–16863 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Youth Attitude Tracking Study (YATS); OMB Number 0704–0069.

Type of Request: Revision.

Number of Respondents: 13,050.

Responses per Respondent: 1.

Annual Responses: 13,050.

Average Burden per Response: 26 minutes.

Annual Burden Hours: 5,618 hours.

Needs and Uses: The information collected by YATS is utilized by the Department of Defense to ascertain changes in youth attitudes that affect recruiting budgets, and to support analyses of recruiting incentives and diagnoses of recruiting difficulties.

Approximately 10,000 young men and women between the ages of 16 and 24 are interviewed by telephone each Fall to determine attitudes and opinions affecting military recruiting. On occasion, additional interviews of approximately 3,000 youth are conducted in the Spring or Summer, but not in the same year, when an information requirement precludes waiting for the normally scheduled Fall interviews. YATS provides an independent measure of youth awareness of military service recruitment advertising, and an efficient measure of potential incentives such as increased educational benefits. The collected information is also used to optimize the allocation of resources and to evaluate the effect of policy changes, as well as in the preparation of Congressional testimony regarding the state of recruiting.

Affected Public: Individuals and households.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 26, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16833 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Change in meeting date.

SUMMARY: On June 20, 1996, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council. (61 FR 31510–31511) This notice is to announce that the meeting date has been changed to July 24, 1996. Comments should be received by July 19, 1996, in order to be considered at the July 24 meeting. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA, 22209–5144, (703) 696–6301, ext. 704.

Dated: June 26, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16834 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Community Redevelopment Authority and Available Surplus Buildings and Land at Kelly Air Force Base, located in San Antonio, TX

SUMMARY: This notice provides information regarding the redevelopment authority that has been established to plan the reuse of Kelly AFB, San Antonio TX. and the surplus property that is located at that base. The property is located 5 miles southwest of downtown San Antonio and is served by the metro public bus. Access to the property is available from Highway 90.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCullough, Senior Representative, Air Force Base Conversion Agency, Kelly Air Force Base, San Antonio, TX, telephone 210–925–3062. For more detailed information regarding particular properties identified in this notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Mr. Don Webster, also at Kelly Air Force Base, telephone (210)-925–0580.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Assistance Act of 1994.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421), the following information regarding the redevelopment authority and surplus property at Kelly Air Force Base, San Antonio, TX is published in the **Federal Register.**

Redevelopment Authority

The redevelopment authority for Kelly Air Force Base, San Antonio, TX. for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended is the Greater Kelly Development Corporation. The

Executive Director is Mr. Paul Roberson in San Antonio, TX, telephone (210) 207–2124.

Surplus Property Descriptions

The following is a listing of the land and facilities at Kelly Air Force Base, San Antonio, TX that are surplus to the federal government.

Land

Approximately 968 acres of land at Kelly Air Force Base and a non-contiguous parcel known as East Kelly containing approximately 323 additional acres of land. These areas will be available between April 1998 and July 13, 2001.

Buildings

Improvements include single and multi family housing, office, industrial and commercial buildings, community support facilities including gas station and recreational facilities, and hangars and support buildings adjacent to the airfield.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. State and local governments, representatives of the homeless, and other interested parties located in the vicinity of Kelly Air Force Base, San Antonio, TX shall submit to the Greater Kelly Development Authority a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said section 2905(b), the Greater Kelly Development Corporation shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Texas the date by which expressions of interest must be submitted.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–16796 Filed 7–1–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Notice of Intent To Prepare an Environmental Assessment (EA) for Disposal of Property at the Defense Personnel Support Center (DPSC), Philadelphia, PA

AGENCY: Department of the Army, DoD.

ACTION: Correction notice.

SUMMARY: This document contains a correction to a previous notice published in the October 13, 1995, edition of the **Federal Register** (60 FR 53344–53345) and in subsequent advertisements published on November 9, 1995, in local media; i.e., *Philadelphia Inquirer, Philadelphia Daily News, South Philadelphia Review, Defense Personnel Support Center News.* In this previous notice, the Army indicated that it would, in accordance with the provisions and requirements of the National Environmental Policy Act (NEPA) of 1969, prepare an Environmental Impact Statement (EIS) whereby it would assess the potential direct, indirect and cumulative impacts resulting from its disposal (and, secondarily, the subsequent reuse by others) of the Defense Personnel Support Center (DPSC)—and Army-owned installation located in Philadelphia, Pennsylvania.

Nonetheless, after carefully considering the information gathered and analysis performed during the past eight months, the Army has not determined that it would be more appropriate to prepare an Environmental Assessment (EA) for the disposal and reuse of DPSC.

Accordingly, to afford the public the greatest opportunity practicable to participate in the assessment of impacts and alternatives associated with the preparation of an EA for the disposal and reuse of DPSC, the Army will (although not legally required to do so) proceed as follows:

(1) A draft copy of the DPSC EA will be made available to the public on Monday, July 15, 1996, at the Free Library of Philadelphia, the Passyunk Branch at 20th and Shunk Streets.

(2) Comments regarding this draft EA will be accepted by Mr. John Bravo, the Base Environmental Coordinator at DPSC, DPSC–DXE, 2800 South 20th Street, Philadelphia, PA, 19145 until 5 PM daylight savings time on Monday, July 29, 1996.

(3) Army representatives will host a public meeting at the Defense Personnel Support Center Auditorium on July 30, 1996, at 7 PM daylight savings time, at which meeting they will respond to comments the Army has received respecting the draft EA, and they will also solicit and respond to any other questions and comments concerning the Army's NEPA process at DPSC that members of the audience may raise at that time.

Following the conclusion of the July 30, 1996, meeting, the Army will proceed with its DPSC NEPA analysis in accordance with applicable legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: For further information regarding this environmental assessment, please contact the DPSC Project Manager, Army Corps of Engineers, Mobile District, at 334–690–2725.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 96–16809 Filed 7–1–96; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Notice To Amend Records Systems.

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to amend records systems; Correction.

SUMMARY: On June 25, 1996 (61 FR 32779) the Defense Logistics Agency proposed to amend five systems of records notices. This notice is being published to correct the identification of the System Names. The System Names were identified using the section symbol instead of the letter S. Correct "§ 322.11 DMDC" to read "S322.11 DMDC," "§ 322.20 DMDC" to read "S322.20 DMDC," "§ 322.35 DMDC" to read "S322.35 DMDC," "§ 322.50 DMDC" to read "S322.50 DMDC," and "§ 322.53 DMDC" to read "S322.53 DMDC."

Dated: June 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16753 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Corps of Engineers

Proposal To Issue, Reissue, and Modify Nationwide Permits; Public Hearing

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to notice of public hearing.

SUMMARY: This document contains a correction to the Corps notice of public

hearing published Monday, 17 June 1996 (61 FR 30778). The notice of public hearing contained the purpose, time, place, and date of the public hearing. The purpose of the public hearing is to allow the public to submit written and/or oral comment on the Corps proposal to reissue the existing nationwide permits (NWPs) and conditions, with some modifications, and issue four new NWPs published Monday, 17 June 1996 (61 FR 30780). The time and place of the public hearing will remain the same. The dates and the speaker time limit stated are corrected.

DATES: The hearing will commence at 10:00 AM on 5 August 1996, and end at 4:00 PM or before, if all speakers present have had an opportunity to speak.

ADDRESS: The hearing will be held at the National Guard Association Building, One Massachusetts Avenue, N.W., Washington, D.C. Written comments may be submitted to HQUSACE, ATTN: CECW–OR, Washington, D.C., 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Zimmerman or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0199.

SUPPLEMENTARY INFORMATION: As was stated in the original Notice, the hearing is open to the public. Comments may be submitted in person at the hearing or in writing to the Office of the Chief of Engineers at the address given in **ADDRESS.** Filing of a written statement at the time of giving an oral statement would be helpful and facilitate the job of the court reporter. The hearing will be held in accordance with the Corps public hearing regulations in 33 CFR Part 327. The legal authority for this hearing is Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Need for Correction

As published, the Notice contains two incorrect dates. The date for the public hearing found in the second column, twenty-first line, was stated as "17 July 1996", and should read "5 August 1996". The date for the hearing record found in the second column, nineteenth line, was stated as "1 August 1996" and should read "16 August 1996". Due to an anticipated higher volume of speakers than originally projected, the time limit is to be reduced from that stated in the second column, eleventh line, as "15 minutes" to "10 minutes".

Dated: June 27, 1996.

Approved:

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 96–16851 Filed 7–1–96; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Shipyard, Philadelphia, PA

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Shipyard, Philadelphia, Pennsylvania, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Helen McCabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Shipyard, Philadelphia, Pennsylvania, was designated to close and the property be preserved pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. In 1995 this designation was revised to reflect closure and disposal of the property. Pursuant to this revised designation, on 28 September 1995 the land and facilities at this installation were declared excess to the Department of Navy and made available for use by other federal public agencies. No interest has been expressed.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Shipyard, Philadelphia, Pennsylvania, is published in the **Federal Register.**

Redevelopment Authority

The redevelopment authority for the Naval Shipyard, Philadelphia, Pennsylvania for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Philadelphia, acting by and through its Mayor, Edward G. Rendell. For further information contact Ms. Terry Gillen, Senior Vice President and Director, Office of Defense Conversion, Philadelphia Industrial Development Corporation, 2600 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102–2126, telephone (215) 496–8020 and facsimile (215) 977–9618.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Shipyard, Philadelphia, Pennsylvania that are surplus to the federal government.

Land

Approximately 265.9 acres of improved and unimproved fee simple land including land under water at the Naval Shipyard, Philadelphia, Pennsylvania. In general, all areas will be available upon the closure of the Naval Shipyard, anticipated for September 1996.

Buildings

The following is a summary of the facilities located on the above described land. Property numbers are available on request.

—Administrative office facilities (9 structures), Comments: Approx. 312,300 square feet;
—Above ground fuel oil storage tanks (4 tanks), Comments: Approx. 4 million gallons;
—Cafeteria; Comments: Approx. 19,880 square feet;
—Drydocks (5 structures);
—Fixed cranes (5 crane structures);
—Fuel farm ops. Facilities (7 structures), Comments: Approx. 4,100 square feet;
—Lockers/showers/restroom facilities (2 structures), Comments: Approx. 15,850 square feet;
—Piers (4 structures);
—Public Works shop; Comments: Approx. 840 square feet;
—Ship/Industrial maintenance facilities (31 structures), Comments: Approx. 1,819,410 square feet;
—Shop storage facilities (6 structures), Comments: Approx. 48,302 square feet;

—Utilities/support facilities (21 structures and various distribution systems);
—Wharfs (5 structures).

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Shipyard, Philadelphia, shall submit to said redevelopment authority (City of Philadelphia) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. The redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the City of Philadelphia, the date by which expressions of interest must be submitted.

Dated: June 19, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–16797 Filed 7–1–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Library of Education Advisory Task Force Meeting

AGENCY: National Library of Education Advisory Task Force.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the third meeting of the National Library of Education Advisory Task Force (Task Force). This notice also describes the functions of the Task Force. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: July 31, 1996, 9 a.m. to 12 p.m.; August 1, 1996, 9 a.m. to 4:30 p.m.; August 2, 1996, 9 a.m. to 12 p.m.

ADDRESSES: July 31, 1996, Room 5272, Boelter Hall, University of California at Los Angeles, Los Angeles, California; August 1 and 2, 1996, Room 3340, Moore Hall (Reading Room), University of California at Los Angeles, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: E. Stephen Hunt, National Library of Education, 555 New Jersey Ave., NW., Washington, DC 20208–5523. Telephone: (202) 219–1882; FAX: (202) 219–1970.

SUPPLEMENTARY INFORMATION: The National Library of Education Advisory Task Force is authorized by Part E, Section 951(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Task Force prepares a set of recommendations on the establishment and development of the National Library of Education for presentation to the Assistant Secretary for the Office of Educational Research and Improvement.

The meeting of the Task Force is open to the public. The agenda for July 31–August 2, 1996 includes the discussion of drafts of sections of the Task Force Report, dialogue with members of the public from the Western United States who wish to attend and are unable to attend East Coast meetings, and the conduct of Task Force business including planning the completion and final presentation of the Task Force Report.

A final agenda will be available from the offices of the National Library of Education on July 12, 1996.

Records are kept of all Task Force proceedings, and are available for public inspection at the central office of the National Library of Education, 555 New Jersey Ave., NW., Washington, DC 20208–5523 between the hours of 8:30 a.m.–4:30 p.m.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 96–16693 Filed 7–1–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–588–000]

Centana Intrastate Pipeline Co.; Notice of Petition for Declaratory Order

June 26, 1996.

Take notice that on June 20, 1996, Centana Intrastate Pipeline Company (CIPCO), 5718 Westheimer Court, Houston, Texas 77057, filed in Docket No. CP96–588–000 a petition for an order declaring that the acquisition by CIPCO of the Silsbee, Big Hill and Line 14 facilities from Texas Eastern Transmission Corporation (Texas Eastern) and the ownership and operation of those facilities by CIPCO are not subject to the jurisdiction of the Commission under the Natural Gas Act and will not change CIPCO's status as an intrastate pipeline, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIPCO states that the Silsbee facilities consist of Lines 2–F and 2–J comprising 55.92 miles of various sized pipeline ranging from 3.5 inches to 10 inches in diameter and associated meter stations. CIPCO also states that the Big Hill facilities consist of Line 8–A comprising 13.61 miles various sized pipeline ranging from 6.625 to 8.625 inches in diameter and associated meter stations. CIPCO further states that Line 14 consists of 5.8 miles of 30-inch pipeline which parallels a portion of Texas Eastern's 30-inch mainline between Beaumont and Vidor, Texas.

CIPCO maintains that the facilities to be acquired from Texas Eastern will be owned and operated by CIPCO and will become an integral part of CIPCO's intrastate pipeline system. CIPCO states that the Silsbee and Big Hill facilities will provide access by CIPCO to additional wellhead supplies of natural gas to meet the requirements of CIPCO's customers. CIPCO maintains that the majority of natural gas supplied by other intrastate pipelines to CIPCO's customers last winter, and transported by CIPCO, was shut-off by those pipelines from time to time to meet other requirements; therefore, acquisition of these facilities will help CIPCO meet the requirements of its customers and increase service reliability to its intrastate customers. CIPCO states that acquisition of Line 14 will provide access to additional intrastate markets and will alleviate operational constraints on CIPCO's intrastate system.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 17, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16792 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–283–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 26, 1996.

Take notice that on June 21, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to become effective August 1, 1996.

Columbia Gulf states that the revised tariff sheets introduce two new services: (1) A Pool Balancing Service which will permit customers to schedule and receive different volumes at pooling points under Rate Schedules AS-Gulf and IPP-Gulf; and (2) a Title Tracking Service under which Columbia Gulf will track pool-to-pool transfers of nominated quantities when the points of receipt and delivery are pooling points established under Rate Schedules AS-Gulf and IPP-Gulf and are located within the same rate zone. Further, the revised tariff sheets include certain revisions to Rate Schedules FTS–1, FTS–2, ITS–1, ITS–2, AS-Gulf, and IPP-Gulf, and to the General Terms and Conditions of Columbia's Gulf's currently effective tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 proceeding. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16793 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–586–000]

Texas Eastern Transmission Corporation; Notice of Application

June 26, 1996.

Take notice that on June 20, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP96–586–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Centana Intrastate Pipeline Company (Centana) the facilities known as Silsbee, Big Hill and Line 14, located in Orange, Jasper, Hardin, Newton and Jefferson Counties, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern states that the Silsbee facilities consist of Lines 2–F and 2–J comprising 55.92 miles of various sized pipeline ranging from 3.5 inches to 10 inches in diameter and associated with meter stations. Texas Eastern further states that the Big Hill facilities consist of Line 8–A comprising 13.61 miles of various sized pipeline ranging from 6.625 inches to 8.625 inches in diameter and associated meter stations. In addition, Texas Eastern states that Line 14 consists of 5.80 miles of 30-inch pipeline paralleling a portion of Line 16 between the Beaumont, Texas compressor station and the Vidor, Texas compressor station.

It is stated that since June 1993, throughput on the Silsbee facilities has declined from 7.0 mdth per day to 5.5 mdth per day and is expected to continue to decline in the future. It is also stated that there has been no recorded throughput on the Big Hill facilities since December 1994. In addition, it is stated that throughput on Line 14 has averaged 1,280 dth per day with current line utilization at under 1 percent. Texas Eastern states that current production on the Silsbee facilities will continue to be available to Texas Eastern's customers at no additional transportation costs and that the throughput on Line 14 will be accommodated by another Texas Eastern line.

Texas Eastern states that it has the understanding that Centana will use the facilities for access to additional wellhead supplies of natural gas needed by Centana to meet the requirements of its intrastate customers, to increase its reliability of service to its intrastate customers, and to alleviate operational constraints on its intrastate system.

Any person desiring to be heard or to protest said reference to said application should on or before July 17, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16791 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1774–000, et al.]

Growth Unlimited Investments, Inc., et al. Electric Rate and Corporate Regulation Filings

June 25, 1996.

Take notice that the following filings have been made with the Commission:

1. Growth Unlimited Investments, Inc.

[Docket No. ER96–1774–000]

Take notice that on June 10, 1996, Growth Unlimited Investments, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. City of Needles, California v. Nevada Power Company

[Docket No. EL96–57–000]

Take notice that on June 6, 1996, the City of Needles, California filed a complaint concerning possible nonperformance under contracts by Nevada Power Company and Enova Energy Management, Inc. The complaint

arises out of two agreements between the City of Needles, California and Nevada Power Company. These are the "Agreement for the Sales of Electric Power and for Transmission Service between Nevada Power Company and the City of Needles, California," and a "Letter Agreement for Power Scheduling Service."

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before July 25, 1996.

3. Rio Grande Electric Cooperative, Inc. v. Central Power & Light Company

[Docket No. EL96–60–000]

Take notice that on June 12, 1996, Rio Grande Cooperative, Inc. (Rio Grande) tendered for filing a complaint against Central Power & Light Company (CP&L). Rio Grande states that this complaint emanates from a dispute between CPL and Rio Grande regarding a settlement in Docket No. ER90–289–000 and that it is filed in compliance with the Commission's Order in Docket No. ER95–1141–000. Rio Grande therefore requests that the Commission determine the appropriate termination fee owed by Rio Grande to CP&L under the earlier agreement between Rio Grande and CP&L that arose out of the settlement of Docket No. ER90–289–000.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before July 25, 1996.

4. Mid-American Resources, Inc. Kimball Power Company

[Docket Nos. ER95–78–002, ER95–232–006]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On June 20, 1996, Mid-American Resources, Inc. filed certain information as required by the Commission's April 6, 1995, order in Docket No. ER95–78–000.

On June 10, 1996, Kimball Power Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–232–000.

5. Midwest Energy, Inc.

[Docket No. ER96–1791–000]

Take notice that on June 6, 1996, Midwest Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corporation

[Docket No. ER96–2151–000]

Take notice that on June 17, 1996, Central Hudson Gas and Electric Corporation (CHG&G) tendered for filing a Service Agreement between CHG&E and Northeast Utilities Service Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Unitil Power Corp.

[Docket No. ER96–2162–000]

Take notice that on June 17, 1996, Unitil Power Corp., tendered for filing a service agreement for service under Unitil Power Corp., FERC Electric Tariff, Original Volume No. 2.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–2163–000]

Take notice that on June 18, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Wheeled Electric Power Company.

Cinergy and Wheeled Electric Power Company are requesting an effective date of June 17, 1996.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–2164–000]

Take notice that on June 18, 1996, New England Power Company submitted for filing a letter agreement for transmission service to PECO Energy Company.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER96–2165–000]

Take notice that on June 18, 1996, New England Power Company, tendered for filing a System Impact Study Agreement between U.S. Generating Company and New England Power Company.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER96–2166–000]

Take notice that on June 18, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Firm Transmission Service Agreement with Tennessee Power Company (Tennessee Power) dated June 12, 1996, and Non-Firm Transmission Service Agreement with Tennessee Power dated June 12, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of June 12, 1996, for the Agreements with Tennessee Power, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Tennessee Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–2167–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 17, 1996 with Rainbow Energy Marketing Corporation (Rainbow) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Rainbow as a customer under the Tariff.

PECO requests an effective date of May 25, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Rainbow and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2168–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a

Service Agreement dated June 13, 1996 with Great Bay Power Corporation (Great Bay) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Great Bay as a customer under the Tariff.

PECO requests an effective date of June 13, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Great Bay and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2169–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 13, 1996 with Consumers Power Company and the Detroit Edison Company, (collectively referred to as MICHIGAN COMPANIES) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MICHIGAN COMPANIES as a customer under the Tariff.

PECO requests an effective date of June 13, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to MICHIGAN COMPANIES and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER96–2170–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 5, 1996 with The United Illuminating Company (UI) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds UI as a customer under the Tariff.

PECO requests an effective date of June 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to UI and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER96–2171–000]

Take notice that on June 18, 1996, PECO Energy Company, (PECO), filed a Service Agreement dated June 4, 1996 with Vastar Power Marketing, Inc. (VASTAR) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds VASTAR as a customer under the tariff.

PECO requests an effective date of June 4, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to VASTAR and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER96–2172–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 4, 1996 with Vastar Power Marketing, Inc. (VASTAR) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds VASTAR as a customer under the Tariff.

PECO requests an effective date of June 4, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to VASTAR and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96–2173–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 23, 1996 with Jacksonville Electric Authority (JEA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds JEA as a customer under the Tariff.

PECO requests an effective date of May 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to JEA and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER96–2174–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 23, 1996 with Jacksonville Electric Authority (JEA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds JEA as a customer under the Tariff.

PECO requests an effective date of May 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to JEA and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER96–2175–000]

Take notice that on June 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with KN Marketing, Inc. (KN). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to KN and KN will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and KN.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER96–2176–000]

Take notice that on June 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with Coral Power, L.L.C. (Coral). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Coral and Coral will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Coral.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. UNITIL Power Corp.

[Docket No. ER96–2177–000]

Take notice that on June 18, 1996, UNITIL Power Corp. (UPC), filed revised sheets to its FERC Electric Tariff, Original Volume No. 2 (Tariff No. 2). Tariff No. 2 was accepted for filing in a letter order dated May 24, 1996 in Docket No. ER96–1427–000, which letter order directed UPC to make certain changes to the Tariff. The revised sheets contain these changes.

UPC states that this filing was served on all existing customers under Tariff No. 2 and the New Hampshire Public Utilities Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said 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 18 CFR 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16813 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2152–000, et al.]

The Washington Water Power Company, et al. Electric Rate and Corporate Regulation Filings

June 24, 1996.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. ER96–2152–000]

Take notice that on June 17, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Vantus Power Services.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER96–2153–000]

Take notice that on June 17, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to Federal Energy Sales, Inc., TransCanada Power Corp., and NorAm Energy Services, Inc., pursuant to PSE&G's Point-to-Point Transmission Tariff presently on file with the Commission in Docket No. ER96–1320–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreements can be made effective as of the date on the agreements.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER96–2154–000]

Take notice that on June 17, 1996, Western Resources, Inc., (Western Resources), tendered for filing First Revised Service Schedule A to its Rate Schedule FERC No. 264. Western Resources states that the change is to revise the procedures under which the Parties may give notice to each other to reduce or terminate service under Service Schedule A.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Phibro, Inc.

[Docket No. ER96–2155–000]

Take notice that on June 17, 1996, Phibro, Inc. (Phibro), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Phibro had completed all the steps for pool membership. Phibro requests that the Commission amend the WSPP Agreement to include it as a member.

Phibro requests an effective date of June 1, 1996, for the proposed amendment. Accordingly, Phibro requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96–2156–000]

Take notice that on June 17, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Commonwealth Edison Company (Commonwealth), dated June 12, 1996. This Service Agreement specifies that Commonwealth has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Commonwealth to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 12, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–2157–000]

Take notice that on June 17, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Coral Power, L.L.C. (CORAL),

dated June 12, 1996. This Service Agreement specifies that CORAL has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER96–276–000 and allows GPU and CORAL to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 12, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–2158–000]

Take notice that on June 17, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated May 1, 1996 between Cinergy, CG&E, PSI and Southern Energy Marketing, Inc. (SEMI).

The Interchange Agreement provides for the following service between Cinergy and SEMI:

1. Exhibit A—Power Sales by SEMI
2. Exhibit B—Power Sales by Cinergy

Cinergy and SEMI have requested an effective date of June 24, 1996.

Copies of the filing were served on Southern Energy Marketing, Inc., Georgia Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER96–2159–000]

Take notice that on June 17, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Ajo Improvement Company

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–2160–000]

Take notice that on June 17, 1996, New England Power Company, tendered amendments to two agreements under which it receives transmission and distribution service from Northeast Utilities Service Company and Western Massachusetts Electric Company. The amendments propose to lift the restrictions against retail wheeling in the agreements so that NEP's affiliate, Massachusetts Electric Company, may sponsor a retail wheeling experiment in selected areas of its service territory.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER96–2161–000]

Take notice that on June 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 3, 1996, with Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc. (Cinergy Operating Companies and Cinergy Services) under PECO's FERC Electric Tariff First, Revised Volume No. 4 (Tariff). The Service Agreement adds Cinergy Operating Companies and Cinergy Services as a customer under the Tariff.

PECO requests an effective date of June 3, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Cinergy Operating Companies and Cinergy Services and to the Pennsylvania Public Utility Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Warbasse-Cogeneration Technologies Partnership L.P.

[Docket No. QF88–438–003]

On June 14, 1996, Warbasse-Cogeneration Technologies Partnership L.P. (Applicant), of 800 Fifth Avenue, Suite No. 7F, New York, New York 10021 submitted for filing an application for recertification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the dual-fuel topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The Commission subsequently certified and then recertified the facility as a qualifying cogeneration facility, *WCP Ltd. Partnership*, 44 FERC ¶ 62,115 (1988), and *Warbasse-Cogeneration Technologies Partnership L.P.*, 53 FERC ¶ 62,023 (1990), respectively. The instant request for recertification is due to the reconfiguration of the facility and an increase in the maximum net electric power production capacity from 31.93 MW to 34 MW. Consolidated Edison Company of New York, Inc. purchases the electric output of the Facility not taken by the Facility's host, Amalgamated Warbasse Houses, Inc.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

12. Calpine Corporation

[Docket No. QF96–54–000]

On June 17, 1996, Calpine Corporation tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said 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 18 CFR 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16814 Filed 7–01–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2705–003 Washington]

Seattle City Light; Notice of Availability of Draft Environmental Assessment

June 26, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Newhalem Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on Newhalem Creek, a tributary of the Skagit River, near the town of Newhalem, in northern Washington.

In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. For further information, contact Mr. John Costello, Environmental Coordinator, at (202) 219–2914.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16815 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Integrated System Power Rates—Proposed Extension

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Current Integrated System rates were approved by the Federal Energy Regulatory Commission (FERC) on September 18, 1991, Docket No. EF91–4011–000. These rates were effective October 1, 1990, through September 30, 1994. These rates were extended on an interim basis by the Deputy Secretary of Energy through September 30, 1996. The Administrator, Southwestern, has prepared Current and Revised 1996 Power Repayment Studies for the Integrated System which show the need for a minor rate adjustment of $1,239,868 (1.3 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 902.23(a)(3). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1997.

DATES: Written comments are due on or before July 17, 1996.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101, (918) 595–6628.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which two customers purchase the entire power output of each of the projects at the dams.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1996 Current Power Repayment Study (PRS) using existing Integrated System rate schedules. The PRS shows the cumulative amortization through FY 1995 at $355,572,353 on a total investment of $982,272,106. The FY 1996 Revised PRS indicates the need for an increase in annual revenues of $1,239,868, or 1.3 percent, over and above the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Integrated System's FY 1995 (last year's) PRS concluded that the annual revenues needed to be increased by 1.1 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold and extend the rates on an interim basis for one year. It once again seems prudent to defer this rate adjustment of 1.3 percent, or $1,239,868 per year in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1997 (next year's) PRS.

On September 18, 1991, the current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis for a period that ended on September 30, 1994. In accordance with 10 CFR Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC.

On September 19, 1994, and August 8, 1995, the Deputy Secretary approved extensions of the Integrated System power rates on an interim basis for the periods October 1, 1994, through September 30, 1995, and October 1, 1995, through September 30, 1996. As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to again extend the current Integrated System rate schedules for the one-year period beginning October 1,

1996, and extending through September 30, 1997.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of the Repayment Study Data Package for the Integrated System, please submit your request to: Mr. George Grisaffe, Assistant Administrator, Office of Administration and Rates, PO Box 1619, Tulsa, OK 74101, or call (918) 595–6628.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 21st day of June, 1996.

Michael A. Deihl,

Administrator.

[FR Doc. 96–16846 Filed 7–1–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Replacement Resources Methods Report, Grand Canyon Protection Act of 1992

AGENCY: Western Area Power Administration (Western), DOE.

ACTION: Notice of availability, meetings, and comments.

SUMMARY: Western has been engaged in a process to identify economically and technically feasible methods for replacing power resources which will be lost due to long-term, operational constraints at Glen Canyon Dam. This process will conclude with a report of the findings to Congress as required by the Grand Canyon Protection Act (GCP Act) of 1992, Title XVIII of Pub. L. 102–575. Section 1809 of the GCP Act requires the Secretary of Energy to consult with representatives of the Colorado River Storage Project (CRSP) power customers, environmental organizations, and the Colorado River Basin States and with the Secretary of the Interior in this process. The Secretary of Energy, acting through Western, has the responsibility of marketing power generated from Glen Canyon Dam and other CRSP power facilities, including power acquired by Western to replace the power lost due to operational changes at Glen Canyon Dam.

Western published a notice initiating the formal, public consultation process in the **Federal Register** on August 8, 1994 (59 FR 40357). An October 7, 1994, **Federal Register** notice (59 FR 51191) by Western announced four regional public consultation meetings. A 20-page, Replacement Resources Information Packet was prepared that included Western's proposed process to complete the method identification requirement of the GCP Act. On October 20, 1994, this information packet, along with the text of the October **Federal Register** notice, was mailed to approximately 900 entities and individuals on Western's Replacement Resources Process mailing list. In November 1994, four regional public involvement meetings were held in Salt Lake City, Utah; Denver, Colorado; Phoenix, Arizona; and Albuquerque, New Mexico. Public comments were received on the proposed process through December 19, 1994, the comment deadline. Newsletters that provided updates on the status of replacement resources activities were prepared by Western in February and October 1995. These newsletters were distributed to Western's mailing list. On April 30, 1996, at Western's CRSP Customer Service Center's Annual Customer Meeting in Salt Lake City, Western provided an update on replacement resources activities to CRSP power customers and to Bureau of Reclamation (Reclamation) representatives. This update included a discussion by Western of earlier public comment.

DATES: Western now announces the availability of the Draft Replacement Resources Methods Report (Draft Methods Report). Western is also seeking comments on the Draft Replacement Resources Methods Report. To be considered, comments need to be received by September 3,1996. In addition, Western will hold four public meetings to provide information and to accept public comment on the proposed methods included in this report. Public consultation meetings will be held:

July 23, 1996: Albuquerque, New Mexico, Courtyard Marriott Hotel, 1920 Yale Boulevard, SE., 9 a.m. to noon

July 24, 1996: Phoenix, Arizona, Embassy Suites Hotel, 3210 NW., Grand Avenue, at 9 a.m. to noon

July 25, 1996: Denver, Colorado, Denver West Marriott, 1717 Denver West Boulevard, 9 a.m. to noon

July 29, 1996: Salt Lake City, Utah, Doubletree Hotel, 215 South Temple, 8:30 a.m. to 11:30 a.m.

Background

The Replacement Resources Methods Report identifies economic and technically feasible methods to replace capacity made unavailable ("or lost") due to operational constraints. The report also includes a "proof-of-concept" analysis of five hypothetical resource options with varying degrees of complexity. The methods considered are consistent with other Western resource acquisition policies, such as Western's Principles of Integrated Resource Planning (IRP) and its Purchase Power Policy. The methods would also be consistent with the pending Salt Lake City Area/ Integrated Projects (SLCA/IP) Contract Amendment, the Records of Decision in Western's SLCA/IP Electric Power Marketing Environmental Impact Statement (EIS) and Energy Planning and Management Program, Reclamation's Glen Canyon Dam EIS, pertinent Federal Energy Regulatory Commission orders, and laws affecting DOE, Western, and CRSP.

In the Draft Methods Report, Western evaluates methods to replace capacity made unavailable ("or lost") due to operational constraints using spot market, seasonal (6 months), and mid- to long-term (1 year or more, up to the end of the contract term) resource acquisitions. Western would consult with firm power customers periodically about the amount and term of resource acquisitions to be made on their behalf, which Western could then acquire and deliver to them. Greater public involvement and more complex evaluation procedures and acquisition methods would be used for long-term acquisitions rather than for seasonal acquisitions, consistent with Western's Purchase Power Policy.

Western proposes to use a screening tool and a production cost computer model to evaluate future resource offers from potential suppliers. The Draft Methods Report details how these evaluation tools are applied to evaluate five hypothetical resource purchases. These resource alternatives were designed to illustrate the screening and evaluation tool's abilities to evaluate and select from among many diverse replacement resource options and to consider transmission system constraints and possible solutions. The Draft Methods Report concludes that the screening criteria and evaluation tools developed will enable Western to identify economically and technically feasible replacement power resources in the future.

Further Information

To provide written comments on the Draft Replacement Resources Methods Report, contact: Mr. Jeffrey McCoy, Resource Analysis Team Lead, CRSP Customer Service Center, Western Area

Power Administration, PO Box 11606, Salt Lake City, UT 84147–0606.

Environmental Compliance

Western will comply with the National Environmental Policy Act of 1969 through an appropriate level of environmental analysis of the impacts of specific replacement resources when such specific resources are being considered for acquisition.

Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued at Washington, DC, June 24, 1996.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 96–16847 Filed 7–1–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FO Docket Nos. 91–171/91–301; DA No. 96–941]

Emergency Alert System

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: In accordance with the GSA final Rule on Federal Advisory Committee Management, the Federal Communications Commission (FCC) announces the amending and renewing of the advisory committee charter for the Emergency Broadcast System Advisory Committee. This amendment restructures this committee to reflect changes resulting from the new Emergency Alert System (EAS), and changes the name of the committee to the National Advisory Committee (NAC). The Advisory Committee is also renewed for a term that runs from July 25, 1996 to July 25, 1998. At the same time, the FCC terminates the National Business and Industry Advisory Council.

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: The EAS staff by phone at 202–418–1220, or write the Office of the Emergency Alert System, Room 736, Stop Code 1500B1, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

SUPPLEMENTAL INFORMATION: The purpose of the NAC is to assist the FCC in overseeing the new Emergency Alert System (EAS). The EAS recently replaced the Emergency Broadcast System as a means of alerting the public about emergencies. The primary mission of the NAC is to advise the Commission on all matters concerning the EAS and its implementation, including emergency alerting policies, technologies, plans, regulations, and procedures at the national, state, and local levels. The NAC also recommends and develops training and education regarding the EAS, and coordinates with state and local officials to assist in maintaining effective emergency alerting programs. The NAC is necessary and in the public interest because of the close coordination and exchange of information that is needed between the Federal Government, industry and state and local governments in implementing and operating the new EAS. The NAC's membership consists of volunteer government and industry personnel selected by the Commission. Members include representatives from broadcasting, cable, satellite, MMDS, other technologies, government agencies involved in emergency communications, State Emergency Communications Committees (SECC), and special audiences such as the hearing impaired. Officers of the NAC are elected for two year terms and consist of a President, and Subcommittee Chairs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16816 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also 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, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. 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 July 26, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Banponce Corporation, Hato Rey, Puerto Rico; Popular International Bank, Inc., Hato Rey, Puerto Rico; and Banponce Financial Corp., Wilmington, Delaware; to acquire 100 percent of the voting shares of Combancorp, Commerce, California; and thereby indirectly acquire Commerce National Bank, Commerce, California.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Joseph Capital Corporation, South Bend, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of St. Joseph Capital Bank, Mishawaka, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mesaba Bancshares, Inc., Biwabik, Minnesota; and River Bancorp, Inc., Ramsey, Minnesota; to acquire 22.22 percent of Northland Security Bank, Ramsey, Minnesota, a *de novo* bank. In connection with this proposal, River Bancorp has applied to become a bank holding company by acquiring shares of Northland Security Bank.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Big Bend Bancshares Corporation, Presidio, Texas; and Rio Bancshares Corporation, Wilmington, Delaware; to acquire an additional 29.37 percent of the voting shares of Marfa National Bank, Marfa, Texas.

2. East Texas Bancorp, Inc., Longview, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of East Texas Delaware Financial Corporation, Dover, Delaware; and thereby indirectly acquire Community Bank, Longview, Texas.

3. East Texas Delaware Financial Corporation, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Longview, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Western Acquisitions, L.L.C., Buffalo Grove, Illinois; to become a bank holding company by acquiring 43.5 percent of the voting shares of Sunwest Bank, Tustin, California.

2. Western Acquisition Partners, L.P., Buffalo Grove, Illinois; to become a bank holding company by acquiring 43.5 percent of the voting shares of Sunwest Bank, Tustin, California.

Board of Governors of the Federal Reserve System, June 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16811 Filed 7–1–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Great Falls Bancorp, Totowa, New Jersey; to engage *de novo* through its subsidiary Greater Community Financial L.L.C., Totowa, New Jersey, in full service brokerage activities providing portfolio investment advice and securities credit activities related to the company's securities brokerage activities and dealing in bank eligible securities pursuant to § 225.25(b)(4), (15) and (16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16812 Filed 7–1–96; 8:45 am]

BILLING CODE 6210–01–F

Government in the Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 8, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17055 Filed 6–28–96; 3:22 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice of 30-Day Extension in Comment Period and Change in Date for Public Forum on Disclosures in the Resale of Vehicles Repurchased Due to Warranty Defects

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("the Commission" or "FTC") has extended the date by which comments must be submitted and has changed the date for the public forum concerning the practices used in the resale of vehicles previously repurchased from consumers because of warranty defects. This notice informs prospective participants of the changes and sets new dates of July 29, 1996, for the end of the comment period and October 3, 1996, for the forum.

On November 8, 1995, the Consumers for Auto Reliability and Safety and other consumer groups ("Consumer Coalition" or "Petitioners") filed a petition in which they requested that the Commission initiate either a rulemaking proceeding or an

enforcement action regarding the alleged industry practice of reselling vehicles repurchased due to defects without disclosure of the vehicle's prior history to the subsequent purchaser. On April 30, 1996, the Commission published this petition without endorsing or supporting the views expressed therein. In addition to seeking public comment on the issues raised by the petition and on other related issues, the Commission announced its intention to hold a public forum on July 15, 1996, to further discuss these issues with the affected interests. In order to provide sufficient time for interested parties to compile factual material in response to the request for comments, the Commission has extended until July 29, 1996, the date by which comments must be received. In addition, in order to provide participants with sufficient time to review the comments submitted in response to the April 30 notice, the Commission has changed the date of the public forum to October 3, 1996.

DATES: Notification of interest in participating in the public forum must be submitted on or before July 29, 1996. Comments must be received by close of business on July 29, 1996. The public forum will be held in Washington, D.C. on October 3, 1996, from 9 a.m. until 5 p.m.

ADDRESSES: Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public forum will be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: In a petition dated November 3, 1995, the Consumer Coalition requested that the FTC either initiate a rulemaking proceeding or an enforcement action in connection with the industry practice of allegedly reselling vehicles bought back because of defects without disclosure to the used car purchaser. The petitioners allege that auto manufacturers, their dealers and others are engaged in a pattern of conduct (which the petitioners term "lemon laundering") intended to conceal material information about the vehicle's safety and quality history from purchasers of vehicles purchased from consumers as a result of alleged defects. The petitioners also allege that this pattern of conduct often involves transporting the repurchased vehicles across state lines to avoid the operation of state law protections. On April 30, 1996, the Commission published a request for comment on the issues raised by the petition. (A copy of the petition was appended to the notice.) The comment period closes on June 28, 1996. The Commission also announced in the April 30 notice its intention of holding a public forum on July 15, 1996, to allow Commission staff an opportunity to discuss these issues with the various affected interests. The notice set forth the criteria by which such affected interests would be chosen.

Many of the prospective participants in the public forum have expressed concerns that there will not be sufficient time to complete compilation of the requested information before June 28 and have asked that the comment period be extended an additional 30 days to complete their data collection. The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission is also aware that the issues raised are complex and welcomes as much substantive input as possible in order to facilitate its deliberations.

Accordingly, the Commission has decided to extend the comment period to July 29, 1996, and to postpone the public forum until Thursday, October 3, 1996. This extension will provide sufficient time for commenters to complete their data collection and, thereafter, will provide all parties with an opportunity to review the record and to prepare fully for further examination of the issues raised by the April 30 notice. Parties interested in participating in the forum must notify Commission staff by July 29, 1996. Prior to the forum, parties selected will be provided with copies of the comments received from the other participants in response to the April 30 notice.

List of Subjects

Used cars, Warranties, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–16848 Filed 7–1–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 20]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Oshkosh, WI

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin. The Secretary of Transportation (DOT) requested establishment of the increased rate to accommodate employees who perform temporary duty in Oshkosh and who experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show in Oshkosh.

EFFECTIVE DATES: This special rate applies to claims for reimbursement during the period July 27 through August 10, 1996.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Secretary of Transportation, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin, for travel during the period July 27 through August 10, 1996. The attached GSA Bulletin FTR 20 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: June 21, 1996

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 20]
June 21, 1996.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual

subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin, due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show held there. This special rate applies to claims for reimbursement covering travel during the period July 26 through August 10, 1996.

2. *Background.* The Federal Travel Regulation (FTC) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation requested establishment of such a rate for Oshkosh to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show. These circumstances justify the need for higher subsistence expense reimbursement in Oshkosh during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin for travel during the period July 27 through August 10, 1996. Agencies may approve actual subsistence expense reimbursement not to exceed $167 ($137 maximum for lodging and a $30 allowance for meals and incidental expenses) for official travel to Oshkosh (Winnebago County), Wisconsin, during this time period.

4. *Expiration date.* This bulletin contains information of a continuing nature as it relates to the processing of travel reimbursement claims and will remain in effect until canceled.

5. *For further information contact.* Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–16798 Filed 7–1–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–460]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the 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:* Medicare Participating Physician or Supplier Agreement, HCFA 460; *Form No.:* HCFA 460; *Use:* The HCFA 460 is completed by nonparticipating physicians and suppliers if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits. *Frequency:* Once, unless re-enrolled; *Affected Public:* Individuals or Households, and Business or other for-profit; *Number of Respondents:* 70,000; *Total Annual Responses:* 70,000; *Total Annual Hours Requested:* 17,500.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 25, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16843 Filed 7–01–96; 8:45 am]

BILLING CODE 4120–03–P

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 summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in 42 CFR 473.18 (a) and (b), 473.34 (a) and (b), 473.36 (a) and (b), and 473.42 (a), Peer Review Organization (PRO) Reconsideration and Appeals; *Form No.:* HCFA–R–72; *Use:* These regulations contain procedures for PRO's to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration review. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Responses:* 15,670; *Total Annual Hours:* 3,578.

2. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for

which approval has expired; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance; *Form No.:* HCFA–4040; *Use:* The HCFA–4040 is used to establish entitlement to Supplementary Medical Insurance by Beneficiaries not eligible under Part A of Title XVIII or Title II of the Social Security Act. The HCFA–4040SP is the Spanish edition of this form; *Frequency:* One time only; *Affected Public:* Individuals and households, Federal government, State, local, or tribal governments; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as a Rural Health Clinic, Rural Health Clinic Survey Report Form; *Form No.:* HCFA–29, 30; *Use:* The form HCFA–29 "Request for Certification as a Rural Health Clinics" is used by facilities to apply to participate in the Medicare program. The form HCFA–30 "Rural Health Clinic Survey Report Form, is used by State survey agencies to record data needed to determine compliance with the Federal requirements; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 390; *Total Annual Responses:* 390; *Total Annual Hours:* 682.

4. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing; *Form No.:* HCFA–R–41; *Use:* This form is used by State Medicaid agencies to list participating health care facilities and the dates the State agencies reviewed the facilities. The lists are required to assure the existence of an effective utilization (of services) control program, as required by law and regulation, to avoid a penalty; *Frequency:* Quarterly; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 188; *Total Annual Hours:* 9,212.

5. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing Validation Survey; *Form No.:* HCFA–9050; *Use:* Reporting entities may be required to submit lists of Medicaid beneficiaries residing in a select number of institutions. State Medicaid agencies may also be required to submit procedures for conducting inspection of care reviews and other documentation necessary to validate the Quarterly Showing reports. The listings are required to determine those patients for which the State is currently responsible for their care. This part of the operation to determine that states have an effective utilization control program; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 8; *Total Annual Hours:* 376.

6. *Type of Information Collection Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Managed Care Disenrollment Form; *Form No.:* HCFA–566; *Use:* This form is used to process a beneficiaries request of disenrollment action from a health maintenance organization or competitive medical plan and to update the beneficiaries' health insurance master record; *Frequency:* On occasion; *Affected Public:* Individuals and households, Business or other for profit, not for profit institutions, Federal government, State, local, or tribal governments; *Number of Respondents:* 24,000; *Total Annual Responses:* 24,000; *Total Annual Hours:* 792.

7. *Type of Information Collection Request:* New collection; *Title of Information Collection:* "Maximizing the Effective Use of Telemedicine: A study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine."; *Form No.:* HCFA–R–197; *Use:* The major objective of this study is to evaluate the medical and cost effectiveness of three different categories of telemedicine services; *Frequency:* Other (periodically); *Affected Public:* Individuals and households, Business or other for profit, not for profit institutions; *Number of Respondents:* 1819; *Total Annual Responses:* 11,095; *Total Annual Hours:* 1,564.

8. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Utilization and Quality Control Peer Review Organizations (PROs); *Form No.:* HCFA–718–721; *Use:* Submission of proposal information by current PROs and other bidders, according to the business proposal instructions, will satisfy HCFA's need for consistent, and verifiable data with which to validate contract proposals; *Frequency:* Other (Tri-annually); *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 23; *Total Annual Hours:* 450.

9. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Accelerated Payments; *Form No.:* HCFA–9042; *Use:* These forms are used by fiscal intermediaries to access a provider's eligibility for accelerated payments. Such payment is granted if there is an unusual delay in processing bills. *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not for-profit institutions; *Number of Respondents:* 854; *Total Annual Responses:* 854; *Total Annual Hours Requested:* 427.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, 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 Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 25, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16844 Filed 7–1–96; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and

instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; © ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of Model Programs Targeting Substance Abusing Pregnant and Postpartum Women and their Infants —Revision—Data are collected from clients, comparison group women, and staff on interventions received and maternal and child outcomes as part of an evaluation of model projects serving substance abusing pregnant and postpartum women and their infants. The model projects are funded by the Center for Substance Abuse Prevention, SAMHSA. This evaluation will assist CSAP in accomplishing national health objectives related to maternal and child health, especially those directly related to maternal substance abuse and its potential effects on birth outcomes and child development. In this proposed revision of an ongoing study, the data collection instruments remain unchanged. Sample sizes are somewhat smaller than originally anticipated resulting in a reduced annual burden. The estimated revised burden is shown below.

Number of respondents	Responses per respondent	Hours per response	Total burden hours
823	5.48	0.24	1082

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 25, 1996.

Richard Kopanda

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–16831 Filed 7–01–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4100–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451–7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ann M. Sudduth, Telephone number (202) 708–0740 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Occupied Conveyance.

OMB Control Number: 2502–0268.

Description of the need for the information and the proposed use: Information collected by this form provides information HUD needs to determine if the occupant is financially able to pay the fair market rent and/or whether a member of the immediate family residing in the residence suffers from a temporary, permanent or long-term illness or injury which would be aggravated by the process of moving. HUD field office personnel use this information to base its determination as whether to approve or deny occupied conveyance.

Agency form numbers: HUD–9539.

Members of affected public: Individuals or households.

An estimation of the total numbers of hours needed to prepare the information collection is 17,387.50, number of respondents is 11,025, frequency response is one-time, and the hours of response is 4,012.50.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 21, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–16789 Filed 7–1–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 9)

AGENCY: Department of the Interior.

ACTION: Notice of a proposed addition to the Department of the Interior's Categorical Exclusions for the Bureau of Reclamation.

SUMMARY: This notice announces a proposed addition to the categorical exclusions included in Departmental Manual 516 DM 6, appendix 9, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Bureau of Reclamation (Reclamation). The proposed categorical exclusion pertains to transfer of title to single-purpose facilities within Reclamation projects to non-Federal entities.

DATES: Comments are due August 1, 1996.

ADDRESSES: Send comments to: Dr. Darrell Cauley, Manager, Environmental and Planning Coordination Office, Bureau of Reclamation, PO Box 25007, Denver Federal Center, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Dr. Willie R. Taylor, Director, Office of Environmental Policy and Compliance; telephone (202) 208–3891. For Reclamation, Dr. Darrell Cauley, Manager, Environmental Planning and Coordination Office, telephone (303)–236–9336 extension 222.

SUPPLEMENTARY INFORMATION: The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. Reclamation's policy for decades has been to transfer operation and maintenance of projects to local entities where and when appropriate, while retaining title to the project facilities in Federal ownership.

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to single-purpose facilities within a project will, in effect, sever Reclamation's ties with that facility. Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a statement be prepared [section 102(2)(C)] detailing the impacts and effects to the human environment associated with the Federal action. When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirement (40 CFR 1508.4).

Introduction to Proposal

It is the intent of Reclamation to transfer title and responsibility for certain single-purpose facilities within projects, when and where appropriate, to entities who are currently operating and maintaining the facilities or managing the lands. The Department of the Interior (Department) proposes an additional categorical subparagraph 9.4.A(4) in appendix 9 in the Department Manual (516 DM 6). The excluded title transfer action would apply to a relatively small number of single-purpose facilities within projects where the transferees agree to make no significant changes in operations and maintenance, and/or land or water use after transfer. The proposed exclusion in a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any of the proposed title transfers involve any of the following, an environmental assessment (EA) and/or environmental impact statement (EIS) will be prepared in accordance with Reclamation's NEPA Handbook.

1. If the title transfer action involves any of the Departmental exceptions to the categorical exclusions listed in Departmental Manual 516 DM 2, Appendix 2.

2. If the title transfer action would result in significant changes in the operation and maintenance of the facilities or lands transferred, or land and water use in the foreseeable future.

3. If the title transfer action involves any controversy or unresolved issue associated with: protection of interstate compacts and agreements; meeting the Secretary of the Interior's (Secretary) Native American trust responsibilities; fulfilling treaty and international agreement obligations; or protection of the public aspects of the project.

4. Other criteria as determined by Reclamation to warrant an EA or EIS.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the **Federal Register**, 45 FR 27541, Apr. 23, 1980, and revised in 49 FR 21437, May 21, 1984.

Proposed Categorical Exclusion A. (4)

Transfer of title to single-purpose facilities within Reclamation projects, to entities who are currently operating and maintaining the facilities or managing the lands, and who would agree to make no significant changes in operation and maintenance, and/or land and water use within the foreseeable future.

Eligibility for this categorical exclusion would be determined by Reclamation based on results of on-site inspections, surveys, and other methods of evaluation and documentation prepared by Reclamation to determine the presence or absence of the exceptions. A public involvement process will be utilized as part of the title transfer process. Details of this determination process would be added to Reclamation's NEPA Handbook. Projects that do not fully meet any of these exceptions would not qualify for this categorical exclusion.

Discussion of Exceptions

A title transfer action involving one of the Departmental exceptions to categorical exclusions will require the preparation of an environmental assessment. Briefly, the list of exceptions contains criteria including adverse effects on public health or safety, parks, recreation or refuge lands, wilderness areas, ecologically sensitive areas, wild and scenic rivers, wetlands, floodplains, properties listed or eligible for listing on the National Register of Historic Places, and species listed or proposed to be listed on the List of Endangered or Threatened Species, or on designated Critical Habitats for these species, cultural resources, and Indian Trust Assets. Also, included in the Departmental exceptions to categorical exclusions are concerns related to environmental controversy, uncertainty, individually insignificant but cumulatively significant environmental effects, precedent setting decisions about future actions, and compliance with Federal, State, Tribal or local environmental laws, executive orders, and requirements. The complete list of Departmental exceptions will be referred to when applying the categorical exclusion.

Reclamation's general exceptions from the categorical exclusion include title transfer action that incorporates problems or activities which will require the preparation of an environmental assessment. Single-purpose facilities within projects which would be ineligible for the categorical exclusion are those involving the following:

1. Unresolved issues involving the future operation and maintenance of the transferred facilities and lands. Potential transferees must be able to demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets. Operations and maintenance of the facilities must not change in the foreseeable future.

2. Unresolved issues involving future use of lands or water associated with the transferred facilities and lands. Potential transferees must agree not to change the use of the lands or water associated with the transferred facilities for the foreseeable future.

3. Unresolved issues involving protection of interstate compacts and agreements. All transfers must be willing to assume responsibilities for commitments made under existing interstate compacts and agreements.

4. Unresolved issues involving meeting the Secretary's Native American trust responsibilities. All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

5. Unresolved issues involving fulfilling treaty and international agreement obligations.

6. Unresolved issues involving protection of the public aspects of the project or facilities. Potentially affected State, local, and Tribal Governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems, and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner. Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each facility.

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by August 1, 1996, at the location listed under **ADDRESSES** above. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process, Appendix 9—Bureau of Reclamation, 9.4 Categorical Exclusions.

Dated: June 25, 1996.

Kenneth D. Naser,

Acting Director, Office of Environmental Policy and Compliance.

516 DM 6, Appendix 9—Bureau of Reclamation, 9.4 Categorical Exclusions

* * * * *

A. * * *

4. Transfer of title to single-purpose facilities within Reclamation projects to entities who are currently operating and maintaining the facilities or managing the lands, and who would agree to make no significant changes in operation and maintenance, and/or land and water use within the foreseeable future.

[FR Doc. 96–16654 Filed 7–1–96; 8:45 am]
BILLING CODE 4310–94–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Kootenai River Population of White Sturgeon in Idaho and Montana for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kootenai River population of white sturgeon. The Kootenai River white sturgeon represents a land-locked population found in the Kootenai River from Kootenai Falls, Montana, downstream through Kootenay Lake to Corra Linn Dam on the lower West Arm of Kootenay Lake, British Columbia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 30, 1996, to receive consideration by the Service.

ADDRESSES: The draft recovery plan is available for public inspection by appointment during normal business hours at either the Service's Upper Columbia River Basin Office, 11103 East Montgomery Drive, Suite #2, Spokane, Washington, 99206 or the Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho, 83705. Persons wishing to review the draft recovery plan may obtain a copy by contacting the Supervisor, Snake River Basin Office, at the above address or by calling (208) 334–1931. Written comments and materials regarding the plan should be sent to the Service's, Snake River Basin Office, attention Recovery Team Leader, at the above Boise address. Comments and materials received are available on request for public inspection by appointment at the Snake River Basin Office.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink or Steve Duke, at the Service's, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Kootenai River white sturgeon became isolated from other white sturgeon in the Columbia River basin during the last glacial age (approximately 10,000 years ago). Since then, the population has adapted to the pre-development habitat conditions in the Kootenai River drainage. Historically, spring runoff peaked during the first half of June in the Kootenai River upstream of the existing Libby Dam in Montana. Runoff from

lower elevations between Libby Dam and Bonners Ferry, Idaho, was somewhat earlier, peaking in late May. Combined flows were often in excess of 1700 cubic meters per second (m^3/s) [60,000 cubic feet per second (cfs)]. During the remainder of the year, river flows declined to basal conditions of 113 to 226 m^3/s (4,000 to 8,000 cfs). Annual flushing events re-sorted river sediments providing a clean cobble substrate conducive to insect production and sturgeon egg incubation. Side channels and low-lying deltaic marsh lands were unimpounded at this time, providing productive, low velocity backwater areas. Nutrient delivery in the system was unimpeded by dams and occurred primarily during spring runoff. Floodplain ecosystems like the Kootenai River are characterized by seasonal floods that promote the exchange of nutrients and organisms among a mosaic of habitats and thus enhance biological productivity.

Modification of the Kootenai River white sturgeon's habitat by human activities has changed the natural hydrograph of the Kootenai River, altering white sturgeon spawning, egg incubation, nursery, and rearing habitats, and reducing overall biological productivity. These factors have contributed to a general lack of recruitment in the white sturgeon population over the past 22 years.

Recovery of the Kootenai River white sturgeon is contingent upon re-establishing natural recruitment, minimizing additional loss of genetic variability to the population, and successfully mitigating biological and physical habitat changes caused by the construction and operation of Libby Dam. This draft recovery plan proposes conservation actions to benefit white sturgeon within the entire Kootenai River watershed in Canada and the United States. However, recovery tasks proposed for the Canadian portion of the white sturgeon's range are only recommendations since the Act does not impose any restrictions or commitments on Canada. The draft recovery plan also proposes a strategy for improving coordination and cooperation between the United States and Canada on the operation of Libby Dam with the operation of other hydroelectric facilities within the Kootenai River basin and elsewhere in Canada.

The draft plan was developed by a recovery team composed of representatives of the Kootenai Tribe of Idaho, Idaho Department of Fish and Game, Montana Fish, Wildlife and Parks, Bonneville Power Administration, U.S. Army Corps of Engineers, Canadian Department of Fisheries and Oceans, British Columbia Ministry of Environment, Lands and Parks, and the Service. Short-term recovery objectives proposed are: a) prevent extinction and b) begin to re-establish successful natural recruitment to the Kootenai River population of white sturgeon. Proposed recovery actions include providing additional Kootenai River flows necessary for natural recruitment and using aquaculture, i.e. hatchery propagation, to prevent extinction. The long-term objectives are to provide suitable habitat conditions to ensure a self-sustaining Kootenai River population of white sturgeon. Specific delisting criteria are not determinable or proposed at this time.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 25, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, OR.

[FR Doc. 96–16806 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CO–017–1610–00]

Availability of White River Resource Area's Proposed Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) for the White River Resource Area. The PRMP/FEIS describes and analyzes the proposed management for 1,455,900 acres of public land and 365,000 acres of federal mineral estate in portions of Rio Blanco, Moffat and Garfield Counties in western Colorado.

Decisions generated as a result of this planning process will supersede and/or incorporate decisions of earlier land use plans, including the 1975 White River Management Framework Plan, the 1981 White River Resource Area Coal Amendment to the White River Management Framework Plan, the 1981 White River Resource Area Grazing Management Environmental Impact Statement, and the 1987 White River Resource Area Piceance Basin Resource Management Plan and Environmental Impact Statement.

DATES: Protests of the proposed plan must be received by August 5, 1996.

ADDRESSES: Written protests on the PRMP/FEIS should be addressed to: Director (480), Bureau of Land Management, Resource Planning Team, 1849 "C" Street, NW., Washington, DC 20240.

Copies of the PRMP/FEIS will be available for review at the following locations: (1) Bureau of Land Management, White River Resource Area Office, 73544 Highway 64, Meeker, Colorado 81641; (2) Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625; and (3) Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Denver, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Bill Hill, RMP Team Leader, White River Resource Area Office, Meeker, Colorado 81641, (970) 878–4160.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS addresses issues identified through public scoping and internal Bureau of Land Management review, including: (1) Salinity in the Colorado River; (2) mineral development throughout the resource area; (3) the spread of noxious and problem weeds; (4) reintroduction of the black-footed ferret; (5) unrestricted motorized travel throughout the resource area; and (6) habitat competition among wild horses, livestock and big game. Four alternatives were analyzed in the Draft RMP/EIS that was published in October 1994. The Proposed Resource Management Plan and Final Environmental Impact Statement combines ecosystem concepts, public comments, and components from the four alternatives described in the Draft.

Some of the major decisions developed in the proposed management plan deal with: (1) Making mineral resources available for exploration, leasing and development, in compliance with environmental laws, regulations and policies; (2) protecting sensitive resources by designating certain areas as closed or limited to off highway vehicle use until a subsequent travel management plan can be developed; (3) releasing the river and stream segments inventoried for Wild and Scenic River (WSR) Management from further WSR consideration; (4) managing wild horse

herds in the Piceance-East Douglas Herd Management Area to maintain 95 to 140 head of horses; and (5) designating eleven additional areas as Areas of Critical Environmental Concern (ACEC).

Public participation has occurred throughout the RMP/EIS process starting with a Federal Register Notice of Intent to prepare a RMP in October 1990. Since that time, several open houses, public meetings, and public hearings were held to solicit comments and ideas. Public comments provided throughout the process were considered in the development of the document.

Robert Schneider,

Acting District Manager, Craig, CO.

[FR Doc. 96–16799 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–BY–M

[NM–070–5101–00–018); NMNM 96322]

Notice of Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM 96322, was received for a 36 mile right-of-way for a 30-inch diameter pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973, (37 Stat. 576), Williams Gas Processing Company (WGP) has applied for a right-of-way serialized as NMNM 96327 to construct 36 miles of 30-inch diameter natural gas pipeline across public land in San Juan and Rio Arriba Counties, New Mexico. This is part of a project that will loop existing lines and/or roads most of route (74%). In May 1996, WFS's Trunk S pipeline failed along a reach of its alignment beneath Navajo Lake. The failure of the line has interrupted service to 31 oil/gas producers in the San Juan Basin which effects the movement of approximately 210–235 MMSCF/D of natural gas and liquid recovery product. A land re-route is proposed to reconnect affected gas producers south of Navajo Lake to the Ignacio Plant in southwestern Colorado. The pipeline is urgently needed by WGP to meet contractual obligations with numerous producers affected by the Trunk S pipeline failure. The proposed line crosses the following lands in San Juan County.

New Mexico Principal Meridian

T. 30 N., R. 6 W.,
Sec. 17, NW¼NW¼;
Sec. 18, N½NE¼, NE¼NW¼, S½NW¼, NW¼SW¼.
T. 30 N., R. 7 W.,
Sec. 13, NE¼SW¼. S½SW¼, N½SE¼;
Sec. 14, S½SE¼;
Sec. 15, NE¼SW¼; W½SE¼;
Sec. 17, Lot 8;
Sec. 19, Lots, 10, 11, NE¼SW¼;
Sec. 20, Lot 2, E½NW¼, NW¼SW¼;
Sec. 21, NW¼NE¼, NE¼NW¼;
Sec. 22, N½NE¼, NW¼NW¼;
T. 30 N., R. 8 W.,
Sec. 5, lots 3, 4, SW¼NW¼;
Sec. 6, lot 11, E½SE¼;
Sec. 7, NE¼SW¼;
Sec. 14, SW¼SE¼;
Sec. 19, lot 8, SE¼SE¼;
Sec. 20, lots 7, 8, 9, S½NE¼;
Sec. 21, SW¼NW¼, N½S½;
Sec. 22, NE¼NE¼, S½N½, NW¼SW¼;
Sec. 23, N½N½;
Sec. 24, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼.
T. 30 N., R. 9 W.,
Sec. 12, NE¼SE¼, S½SE¼;
Sec. 13, NE¼NE¼, W½E½;
Sec. 24, lots 2, 3, 5–8 inclusive.
T. 31 N., R. 8 W.,
Sec. 5, SW¼NE¼, N½SE¼;
Sec. 8, E½E½;
Sec. 17, E½E½;
Sec. 28, SW¼NW¼, W½SW¼;
Sec. 29, E½E¼;
Sec. 33, W½NW¼.
T. 32 N., R. 7 W.,
Sec. 17, lots 4–7, inclusive;
Sec. 18, lots 2, 3, E½SW¼NE¼, E½NW¼SW¼NE¼, W½SE¼NW¼, SE¼NW¼.
T. 32 N., R. 8 W.,
Sec. 13, NE¼SW¼, S½SW¼, N½SE¼;
Sec. 14, S½SE¼;
Sec. 22, NE¼SE¼, S½SE¼;
Sec. 23, NW¼NE¼, NE¼NW¼, S½NW¼, NW¼SW¼;
Sec. 27, NW¼NE¼, NE¼NW¼, SW¼NW¼, W½SW¼;
Sec. 28, SE¼SE¼;
Sec. 33, N½NE¼, SE¼NW¼, NW¼SW¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 within 14 days of publication of this notice. Additional information can be obtained by contacting Mary Jo Albin at (505) 599–6332.

Dated: June 25, 1996.

Robert Moore,

Acting Assistant District Manager for Resources.

[FR Doc. 96–16802 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–FB–M

[MT–070–96–1430–01; MTM–83735]

Notice of Realty Action; Proposed Sale of Public Land; Montana

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at not less than estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Principle Meridian, Montana

T. 7 N., R. 13 W.
Sec. 30, Lot 23.

Containing approximately 1.99 acres.

This land is being offered by direct sale to David Harris, Philipsburg, MT, and will resolve a long standing inadvertent unauthorized occupancy of the land. It has been determined that the reservation of minerals is interfering with appropriate nonmineral development of the lands; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States and will be subject to valid existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Garnet Resource Area Office, Bureau of Land Management, 3255 Ft. Missoula Rd., Missoula, MT 59801.

FOR FURTHER INFORMATION CONTACT: Jim Ledger, Realty Specialist, Garnet. Resource Area, at (406) 329–3914.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the Area Manager, Garnet Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 4, 1996.

W. Delon Potter,

Acting Area Manager.

[FR Doc. 96–16800 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–DN–P

[CA–066–06–1610–00]

Proposed South Coast Resource Management Plan Amendment, Riverside County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment addressing a proposed amendment to the South Coast Resource Management Plan affecting public lands within Riverside County. Under the proposed plan amendment, parcels previously available only for exchanges to acquire land in the Potrero Area of Critical Environmental Concern (ACEC) could also be used to acquire habitat for the Stephens' Kangaroo Rat, consistent with the Habitat Conservation Plan for the Stephens' Kangaroo Rat. Lands that are acquired under these exchanges would be managed in accordance with the Habitat Conservation Plan, and the plan amendment would also address such management issues as designation of a habitat management area, right of way avoidance area and mineral entry conflicts.

DATES: Citizens are requested to help identify significant issues related to the proposed plan amendment. Written comments must be submitted no later than August 1, 1996, to: Ms. Julia Dougan, Area Manager, Bureau of Land Management Palm Springs—South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000. Anyone submitting comments will receive a copy of the proposed plan amendment and environmental assessment when available.

FOR FURTHER INFORMATION CONTACT: Ms. Elena Misquez, Bureau of Land Management Palm Springs—South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000; telephone (619) 251–4826.

SUPPLEMENTARY INFORMATION: The South Coast Resource Management Plan designated 4,957 acres of federal land as available only for exchanges to acquire land at the Potrero ACEC. Subsequently, in 1996, the Habitat Conservation Plan for the Stephens' Kangaroo Rat established a regional system of seven core reserves, but did not include the Potrero ACEC as a core reserve. The proposed plan amendment would give BLM the flexibility to exchange federal lands to acquire lands in and around the seven core reserves, while retaining the option of acquiring lands in the Potrero ACEC. Once the acquisition objectives of the Habitat Conservation Plan for the Stephens' Kangaroo Rat have been met, the federal lands would be available for exchanges to meet Resource Condition Objectives in the South Coast Resource Management Plan. (40 Code of Federal Regulations (CFR) 1501.7 and 43 CFR 1610.2).

Julia Dougan,

Area Manager.

[FR Doc. 96–16756 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 1996. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 17, 1996.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Faulkner County, Dunaway, O. L., House, 920 Center St., Conway, 96000797
Harton, D. O., House, 607 Davis St., Conway, 96000796

California

Los Angeles County, Bullock's Pasadena, 401 S. Lake Ave., Pasadena, 96000776
Charmont Apartments, 330 California Ave., Santa Monica, 96000777
Madera County, Villa Riviera, 800 E. Ocean Blvd., Long Beach, 96000778

Connecticut

Fairfield County, Hurlbutt Street School, 157 Hurlbutt St., Wilton, 96000774
Round Hill Historic District, Roughly, jct. of John St. and Round Hill Rd., Greenwich, 96000779
Middlesex County, Wadsworth Estate Historic District, 15, 30, 33, 59, 73, 89 Laurel Grove Rd., Wadsworth Falls State Park, and 421 Wadsworth St., Middletown, 96000775
New London County, Yantic Woolen Company Mill, 6 Franklin Rd., Norwich, 96000780
Windham County, Little Haddam Historic District, Roughly bounded by E. Haddam Rd., Orchard Rd., and Town St., East Haddam, 96000783
Millington Green Historic District, Roughly bounded by Millington, Tater Hill, Haywardville, and Old Hopyard Rds., East Haddam, 96000782
Wickham Road Historic District, Roughly, jct. of Wickham and Geoffrey Rds., East Haddam, 96000781

Florida

Orange County, Griffin Park Historic District, Roughly bounded by Avondale and S. Division Aves., Carter St., and I–4, Orlando, 96000784

Indiana

Jennings County, Benville Bridge, US Army Proving Ground, approximately 1 mi. E off Perimeter Rd., San Jacinto vicinity, 96000789
Edward's Ford Bridge, US Army Jefferson Proving Ground, off Northwest Rd., Nebraska vicinity, 96000788
Ripley County, Collin's Ford Bridge, US Army Proving Ground, approximately .75 mi. W of New Marion, New Marion vicinity, 96000787
Marble Creek Bridge, US Army Jefferson Proving Ground, approximately .75 mi. W of jct. of G and W. Recovery Rds., San Jacinto vicinity, 96000785
Old Timbers, US Army Jefferson Proving Ground, approximately .5 mi. SE of jct. of K Rd. and Northeast Exit, Madison vicinity, 96000786

Kentucky

Campbell County, Monmouth Street Historic District, Monmouth St. between 3rd and 11th Sts., Newport, 96000794
Fayette County, Wolf Wile Department Store Building, 248—250 E. Main St., Lexington, 96000795
Graves County, Mayfield Downtown Commercial District (Boundary Increase), Roughly bounded by N. 9th, W. and E. North, N. and S. 5th, E. Water, and S. and N. 8th Sts., Mayfield, 96000791
Hardin County, Three Bridge Site, N boundary of Ft. Knox at the foot of Muldraugh Hill and continuing S for 3 mi., Ft. Knox vicinity, 96000790
Jefferson County, Lindenberger—Grant House, 8200 Railroad Ave., Lyndon, 96000793
Jessamine County, Payne—Saunders House, 503 N. Central Ave., Nicholasville, 96000799
Kenton County, Lee—Holman Historic District, Bounded by W. Robbins, Holman, W. 12th, and Lee Sts., Covington, 96000798
Taylor County, Sanders, Durham, House, 1251 Sanders Rd., Campbellsville vicinity, 96000792

Michigan

Calhoun County, Homer Village Historic District, Roughly bounded by Leigh, Burgess, Hamilton, School, and Byron Sts., Homer, 96000805
Maple Street Historic District, 161–342 Capital Ave., NE, Battle Creek, 96000806
Iosco County, Cooke Hydroelectric Plant, Cook Dam Rd. at the Cook Dam on the Au Sable River, Oscoda vicinity, 96000803
Jackson County, Concord Village Historic District, Roughly, Hanover St. from Spring to Michigan Sts. and N. Main St. from Railroad to Monroe Sts., Concord, 96000810
Livingston County, St. Augustine Catholic Church and Cemetery, 6481 Faussett Rd., Deerfield Township, Hartland vicinity, 96000802
Macomb County, Clinton Grove Cemetery, 21189 Cass Ave., Clinton Township, Mt. Clemens vicinity, 96000807

Midland County, Parent's and Children's Schoolhouse, (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1505 Crane Ct., Midland, 96000800
St. Joseph County, Morse—Scoville House, 685 S. Washington, Constantine, 96000801
Sanilac County, Port Sanilac Masonic and Town Hall, 20 N. Ridge St., Port Sanilac, 96000808
Wayne County, Deming, Paul Harvey, House, 111 Lake Shore Rd., Gross Pointe Farms, 96000811
Mies van der Rohe Residential District and Lafayette Park, Roughly bounded by Lafayette Ave., Rivard, Antietam, and Orleans Sts., Detroit, 96000809
Remick, Jerome H., and Company, Building, 1250 Library Ave., Detroit, 96000804
Royal Palm Hotel, 2305 Park Ave., Detroit, 96000812

New Jersey

Essex County, North Broad Street Historic District, 136–148 Broad St., Newark, 96000813

New York

Broome County, New York State Inebriate Asylum, 425 Robinson St., Binghamton, 96000814
Herkimer County, Russia Corners Historic District, Roughly, jct. of Military and Beecher Rds., Russia, 96000815

North Carolina

Durham County, Golden Belt Historic District (Boundary Increase), 1000–1004 E. Main St., Durham, 96000816

North Dakota

Cass County, Shea Site, Address Restricted, Embden vicinity, 96000817

South Carolina

Richland County, Southern Cotton Oil Company, 737 Gadsden St., Columbia, 94001552

Tennessee

Fayette County, Lauderdale Courts Public Housing Project (Public Housing Projects in Memphis MPS), Danny Thomas Blvd., Alabama Ave., Exchange Ave., 3rd St., and Winchester, Memphis, 96000819
LeMoyne Gardens Public Housing Project (Public Housing Projects in Memphis MPS), Walker, Porter, Provine, and Neptune Sts., Memphis, 96000820
McMinn County, Etowah Historic District, Roughly bounded by 5th St., Washington Ave., 11th St., and Indiana Ave., Etowah, 96000818.

[FR Doc. 96–16832 Filed 7–1–96; 8:45 am]
BILLING CODE 4310–70–P

Bureau of Reclamation

Animas-La Plata Project, Colorado and New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of supporting Appendices for the Final Supplement to the 1980 Final Environmental Statement (FSFES): FSFES 96–23.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) filed the Final Supplement to the 1980 Final Environmental Statement and published a notice of availability for the FSFES for the Animas-La Plata Project in Colorado and New Mexico on May 2, 1996.

The purpose of this notice of availability is to inform the public of the supporting Appendices to the FSFES and how to acquires copies or review this information.

The supporting Appendices include:

A–Hydrology
B–Water Quality
C–Socioeconomic Analysis
D–Indian Trust Assets
E–Cultural Resources
F–Soils and Trace Element Analysis
G–Vol. 1 Recreation
Vol. 2 Recreation
Vol. 3 Recreation
Vol. 4 Recreation
Vol. 5 Recreation
Vol. 6 Recreation
H–Vol. 1 Wetland, Riparian, and Vegetation Resources
Vol. 2 Wetland, Riparian, and Vegetation Resources
I–Aquatic and Wildlife Resources
J–Wild and Scenic Rivers
K–Threatened and Endangered Species
L–Geological Resources
M–Conceptual Mitigation and Monitoring Plan

ADDRESSES: Single copies of the supporting documents may be obtained on request to the following addresses: Western Colorado Area Office—Southern Division, Bureau of Reclamation, PO Box 460, Durango CO 81302–0640.

Copies are available for inspection at the following locations:

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver Colorado 80225
Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City Utah 84138
Bureau of Reclamation, Western Colorado Area Office—Southern Division, 835 East Second Avenue, Durango, Colorado 81301
Bureau of Reclamation, Western Colorado Area Office—Northern Division, 2764 Compass Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Beck, Planning Team Leader, Bureau of Reclamation, PO Box 640, Durango, Colorado 81302–0640, Phone (970) 385–6558.

SUPPLEMENTARY INFORMATION: The supporting Appendices provide detailed information for the FSFES.

Dated: June 24, 1996.

Charles A. Calhoun,

Regional Director.

[FR Doc. 96–16868 Filed 7–1–96; 8:45 am]
BILLING CODE 4310–94–M

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: an overview of the CALFED Bay-Delta Program; an overview and discussion of the CALFED Bay-Delta Program Phase II Alternatives to address the problems of the Bay-Delta system; the process to refine the alternative components in Phase II of the program; and updates from the fact finding groups on ecosystem restoration, finance and water use efficiency. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 10 a.m. to 5 p.m. on Friday, July 19, 1996.

ADDRESS: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1400 J Street, Room 204, Sacramento, CA.

CONTACT PERSON FOR FURTHER INFORMATION CONTACT: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint

State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 24, 1996.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 96–16867 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–94–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before August 1, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM has submitted to OMB for extension. These collections are contained in (1) 30 CFR Part 710, Initial regulatory program; (2) 30 CFR Part 740, General requirements for surface coal mining and reclamation operations on Federal lands; (3) 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and (4) 30 CFR Part 872, Abandoned mine reclamation funds.

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 OSM's regulations are listed in 30 CFR Parts 700 through 955. As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information were published on April 9, 1996 (61 FR 15830) for 30 CFR Parts 710, 740 and 870, and on April 11, 1996 (61 FR 16113) for 30 CFR Part 872. No comments were received on any of the collections of information.

Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes. OSM will request a 3-year term of approval for each information collection activity.

The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 710—Initial regulatory program.

OMB Control Number: 1029–0095.

Summary: Information collected is used to determine whether surface coal mining operations are subject to the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected is also used to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Coal mine operators.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of the applicant and compliance with the requirements of SMCRA.

Frequency of Collection: On occasion.

Description of Respondents: Coal mine operators on Federal lands.

Total Annual Responses: 30.

Total Annual Burden Hours: 643.

Title: 30 CFR Part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: On occasion (recordkeeping).

Description of Respondents: Coal mine operators.

Total Annual Responses: 1,050.

Total Annual Burden Hours: 2,100.

Title: 30 CFR Part 872—Abandoned mine land reclamation funds.

OMB Control Number: 1029–0054.

Summary: Sections 401 and 402 of SMCRA provide for the creation of the Abandoned Mine Reclamation Fund and require the Secretary to make a determination regarding the use of

allocated State/Indian tribe funds which have been granted but not expended within a three-year period. Granted funds that have not been expended within three years may be withdrawn if the Director finds in writing that the amounts involved are not necessary to carry out approved reclamation activities. This information collection and subsequent determinations serve as a safeguard to protect States and Indian tribes from automatic or indiscriminate withdrawal of funds.

Frequency of Collection: On occasion.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 120—SIB, Washington, DC 20240.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1996.

Ruth E. Stokes,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–16810 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Advisory Council on Violence Against Women

AGENCIES: Department of Justice and Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Advisory Council on Violence Against Women, cochaired by the Attorney General and the Secretary of the Department of Health and Human Services, will meet on July 18, 1996, at the Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC. The meeting is currently scheduled to begin at 10:00 a.m. and to end at 4:30 p.m. The agenda consists of three breakout sessions in the morning, during which each of the Council's eight subgroups will meet. These subgroups are divided according to area of expertise and interest and include: Media and Entertainment; Colleges and Universities; Workplace; Religious Community; Sports Industry; Health Professionals; Primary and Secondary Education; and Law Enforcement. The afternoon session beginning at 1:30 p.m., will be a meeting of the full Advisory Council.

The breakout sessions and the full meeting will be open to the public on a space-available basis, but reservations are required. A photo ID will be requested for admittance. Space reservations and arrangements for any special needs will be handled through the contact point listed below. Sign language interpreters will be provided. Anyone wishing to submit written questions to this session should notify the Designated Federal Employee by Friday, July 12, 1996. The notification may be done by mail, telegram, facsimile, or a hand delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; and a short statement describing the topic to be addressed. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be directed to the Office of the Secretary, United States Department of Health and Human Services, Room 615F, 200 Independence Avenue, SW., Washington, DC. 20201, telephone (202) 690–8157, facsimile (202) 690–7595.

Dated: June 25, 1996.

Bonnie J. Campbell,

Director, Violence Against Women Office, Department of Justice.

[FR Doc. 96–16705 Filed 7–1–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated March 27, 1996, and published in the **Federal Register** on April 4, 1996, (61 FR 15120), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Mallinckrodt Chemical, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 17, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–16849 Filed 7–1–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 20, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219 4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration, Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements—Supply and Service.

OMB Number: 1215–0072.

Frequency: As requested.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 88,797.

Estimated Time Per Respondent: 163.83 hours.

Total Burden Hours: 14,547,229.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This final rule makes three general types of revisions to the current regulations implementing section 503 of the Rehabilitation Act of 1973. First, the regulations' nondiscrimination provisions generally are conformed to the regulations published by the Equal Employment Opportunity Commission implementing Title I of the Americans with Disabilities Act of 1990. Second, the regulations incorporate recent statutory amendments to section 503. Third, the regulations are revised to strengthen and clarify various existing provisions relating to affirmative action for qualified individuals with disabilities, record retention, enforcement and other issues.

The interim rule published concurrent with this final rule modifies the OFCCP regulation requiring Government contractors to invite job applicants to inform the contractor whether the applicant believes that he or she may be covered by the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and wishes to benefit under the contractor's affirmative action program. These changes are substantively identical to OFCCP's revision to the rule requiring invitations to self-identify under section 503 of the Rehabilitation Act of 1973.

Agency: Employment Standards Administration, Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements—Construction.

OMB Number: 1215–0163.

Frequency: As requested.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 136,321.

Estimated Time Per Respondent: 38.32 hours.

Total Burden Hours: 5.223.173.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This final rule makes three general types of revisions to the current regulations implementing section 503 of the Rehabilitation Act of 1973. First, the regulations' nondiscrimination provisions generally are conformed to the regulations published by the Equal Employment Opportunity Commission implementing Title I of the Americans with Disabilities Act of 1990. Second, the regulations incorporate recent statutory amendments to section 503. Third, the regulations are revised to strengthen and clarify various existing provisions relating to affirmative action for qualified individuals with disabilities, record retention, enforcement and other issues.

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Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–16515 Filed 7–1–96; 8:45 am]

BILLING CODE 4510–27–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; Notice of New System of Records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Office of Appeals Counsel Decision Data Base. The system is intended to provide research materials to Board employees involved in the adjudication of petitions for review and other matters under the Board's original and appellate jurisdictions. Information contained in these records will be used in drafting various legal documents in the adjudication process.

DATES: Comments must be received on or before August 1, 1996. This system of records becomes effective as proposed, without further notice, on September 3, 1996, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW., Washington, DC. 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: June 27, 1996.

Robert E. Taylor,

Clerk of the Board.

MSPB/INTERNAL–4

SYSTEM NAME:

Office of Appeals Counsel Decision Data Base

SYSTEM LOCATION:

Office of Appeals Counsel, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed petitions or requests for review with MSPB or its predecessor agency, or have been a party in an original jurisdiction case.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain advisory memoranda prepared by the Office of Appeals Counsel for the Board, or individual members of the Board, and instructions from members of the Board regarding the preparation of decisions for Board issuance. These records also contain individual appellant's names, and may contain social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 1206, 1207, 1208, 7701 and 7702.

PURPOSE:

These records are used for internal legal research by Board employees involved in adjudicating petitions for review and other matters arising under the Board's original and appellate jurisdictions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. to the Government Accounting Office in response to an official inquiry or investigation;

b. to the Department of Justice for use in litigation when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

c. In any proceeding before a court or adjudicative body before which the Board is authorized to appear, when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) The United States, where they agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case the agency determines that the disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

d. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; and

e. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in electronic form on a file server connected to a local area network serving the Office of Appeals Counsel.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Electronic records in this system may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER AND ADDRESS:

The Office of Appeals Counsel, 1120 Vermont Avenue, NW., Washington, DC. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquires.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy act regulations at 5 CFR 1205.21.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before the MSPB either before or after the MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of the Special Counsel; and

d. Other individuals or organizations from whom the MSPB has received testimony, affidavits or other documents.

[FR Doc. 96–16865 Filed 7–1–96; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

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). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records

schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before August 16, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archives of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Executive Office of the President, National Critical Materials Council (N1–359–95–1). Routine and facilitative records maintained by the Council (substantive program records are being preserved).
2. Executive Office of the President, Office of the United States Trade Representative (N1–364–96–1). Electronic and textual records created between April 24, 1986 and January 27, 1993, that are duplicative or deal with routine administrative matters. (Master file of e-mail messages will be preserved).
3. Department of the Army (N1–AU–96–4). Radiation oncology records.
4. Department of the Army (N1–AU–96–5). Patient treatment film.
5. Department of Health and Human Services, National Institutes of Health (N1–443–96–1). Diagnostic Cardiac Records.
6. National Archives and Records Administration (N1–GRS–96–1). Updated General Records Schedule (GRS) 11, Space and Maintenance records.
7. Office of Government Ethics (N1–522–96–2). Records of the Office of Education.

Dated: June 20, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–16801 Filed 7–1–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the addition of the following item which was closed to public observation, to the previously announced closed meeting (Federal Register, Vol. 61, No. 120, page 31557, Thursday, June 20, 1996) scheduled for Wednesday, June 26, 1996.

6. Request for Expanded Authorities Pending Final Adoption of Part 704. Closed pursuant to exemption (8).

The Board voted unanimously that agency business required that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Request from Federal Credit Union to Convert to a Community Charter. Closed pursuant to exemption (8).
4. Appeal from Federal Credit Union of Regional Director's Denial of Request for Expansion to its Field of Membership. Closed pursuant to exemption (8).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

For Further Information Contact: Becky Baker, Secretary of the Board, Telephone (703) 518–6300.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–16940 Filed 6–27–96; 4:46 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 9, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6486C—Aviation Accident Report: In-Flight Icing Encounter and Loss of Control, Simmons Airlines, d.b.a. American Eagle Flight 4184, ATR Model 72–212, Roselawn, Indiana, October 31, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 28, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–17060 Filed 6–28–96; 3:49 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440–OLA–3]

In the Matter of: The Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit 1) Notice of Appointment of Adjudicatory Employees

Pursuant to 10 CFR § 2.4, notice is hereby given that Mr. Charles Serpan, a Commission employee in the Office of Nuclear Regulatory Research, and Mr.

Allen Hansen, a Commission employee in the Office of Nuclear Reactor Regulation, have been appointed as Commission adjudicatory employees within the meaning of section 2.4, to advise the Commission on issues related to the pending appeal of LBP–95–17, 42 NRC 137 (1995). Messrs. Serpan and Hansen have not previously performed any investigative or litigating function connected with this or any factually-related proceeding.

Until such time as a final decision is issued in this matter, parties to the proceeding shall not communicate with Messrs. Serpan or Hansen with regard to the merits of this case.

It is so *ordered.*

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–16875 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8943]

Crow Butte Resources Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact, notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1534 to allow the licensee, Crow Butte Resources, Inc., to increase the maximum concentrations of radium, uranium, and sulfate in process waste fluids to be disposed by deep well injection at its in-situ leach uranium mining facility in Dawes County, Nebraska. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

During April 1991, Crow Butte Resources, Inc. (Crow Butte) commenced uranium recovery operations at its Crow Butte in-situ leach (ISL) uranium mining facility in Dawes County, Nebraska. These activities are authorized by NRC Source Material License SUA–1534. The NRC staff prepared an Environmental Assessment (EA) based on its review of Crow Butte's license application and environmental report (ER); a Final Finding of No Significant Impact (FONSI) concerning the issuance of SUA–1534 was issued on December 27, 1989 (54 FR 53200). Supplemental EAs were prepared based on the NRC staff's review of Crow Butte's amendment requests to increase its maximum processing flow rate from 2500 gallons per minute (gpm) to 3500 gpm, and separately, from 3500 gpm to the currently approved level of 5000 gpm. The NRC staff issued Final FONSIs on March 12, 1993 (58 FR 13561), and February 28, 1996 (61 FR 7541), respectively, concerning these licensing actions.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment to SUA–1534 to allow Crow Butte to increase the maximum concentration limits for radium, uranium, and sulfate in process waste fluids to be disposed by deep well injection at its ISL facility. The concentration limits for these constituents would be increased as follows: (1) For radium, from 1000 picocuries per liter (pCi/l) to 5000 pCi/l; (2) for uranium, from 10 milligrams per liter (mg/l) to 25 mg/l; and (3) for sulfate, from 5000 mg/l to 10,000 mg/l. The NRC staff's review was conducted in accordance with the requirements of 10 CFR 40.32 and 10 CFR 40.45.

Need for the Proposed Action

Crow Butte requested NRC approval of this increase in the concentration limits because the concentrations of radium, uranium, and sulfate in its typical facility waste water may approach or exceed the currently approved limits.

Environmental Impacts of the Proposed Action

The NRC staff approved deep well injection as an alternate method of waste disposal for the Crow Butte ISL facility by amendment to SUA–1534 on October 4, 1994. The NRC staff's approval was conditional on the State of Nebraska issuing the necessary underground injection permit for the deep well disposal process, and finding that the potential for contamination of other usable aquifers by deep well injection was minimal. If the State determined in the affirmative on both of these issues, the NRC staff considered the potential impacts to a member of the public to be minimal. In addition, the NRC staff considered that worker exposure could be adequately managed under Crow Butte's radiation safety program. Finally, the NRC staff determined that the radiological constituent concentration limits requested by Crow Butte were comparable to levels allowed by the NRC at other ISL uranium recovery operations which employ deep well injection as a waste disposal option.

State of Nebraska Department of Environmental Quality (NDEQ) Permit No. NE0206369 was issued to Crow Butte on June 20, 1995. Under this permit, Crow Butte is authorized to operate a Class I non-hazardous waste injection well to inject waste fluids into the Morrison and Sundance Formations, which are located below the lowermost underground source of drinking water (USDW), at approximately 3500 to 3800 feet below ground surface. Due to elevated concentrations of total dissolved solids, water quality in these formations is not considered under Federal or State of Nebraska regulations to be a USDW.

Among other provisions, NDEQ Permit No. NE0206369 requires Crow Butte to continuously monitor the injection pressure to ensure that, coupled with the hydrostatic pressure, the fracture pressure of the injection zones is not exceeded, and to conduct regular mechanical integrity testing of the well to assure that process waste fluids are not injected into an unauthorized injection zone and thus pose a threat to fresh and/or usable waters of the State.

Based on its review of Crow Butte's proposed amendment request, the NRC staff considers that the requested concentration limits for uranium and radium continue to be comparable to levels approved for other ISL operations. The NRC staff defers to the NDEQ on a determination regarding the requested concentration limit for the non-radiological constituent, sulfate. The NRC staff notes that a revised NDEQ Permit No. NE0206369, issued on April 18, 1996, incorporates the increased sulfate concentration level. Finally, the monitoring and testing provisions required under NDEQ Permit No. NE0206369 are not impacted by the proposed amendment.

Conclusion

The NRC staff concludes that approval of Crow Butte's amendment request to increase the maximum

concentration limits for radium, uranium, and sulfate to be disposed by deep well injection will not cause significant environmental impacts.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Since the environmental impacts of the proposed action and this no-action alternative are similar, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

The NRC staff consulted with the State of Nebraska, Department of Environmental Quality (NDEQ), in the development of the Environmental Assessment. A facsimile copy of the final Environmental Assessment was transmitted to Mr. Frank Mills of the NDEQ on June 11, 1996. In a telephone conversation on June 11, 1996, Mr. Mills indicated that the NDEQ had no comments on the Environmental Assessment.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1534. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD., this 25th day of June 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–16876 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 located in San Diego County, California.

The proposed amendment would revise Technical Specifications 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)," and 5.5.2.13, "Diesel Fuel Oil Testing Program." Specifically, the number of instruments required to measure reactor coolant inlet temperature (T_{cold}), and reactor coolant outlet temperature (T_{hot}), will be revised from two per loop to two (with one per steam generator). The proposed change would also revise criteria for diesel fuel oil testing. The changes described above would reinstate provisions of the current San Onofre Nuclear Generating Station (SONGS), Unit Nos. 2 and 3 technical specifications that were revised as part of Amendment Nos. 127 and 116. These amendments adopted the recommendations of NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Technical Specification Change Number NPF–10/15–466 (PCN–466), Supplement 1 addresses modifications to the Technical Specifications for San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 approved by NRC Amendment Nos. 127 and 116. NRC Amendment Nos. 127 and 116 approved changes to adopt the recommendations of NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants," requested through Proposed Technical Specification Change Number NPF–10/15–299 (PCN–299). The proposed changes were identified during drafting of the procedure changes required to implement NRC Amendment Nos. 127 and 116.

PCN–466 Supplement 1 is required to restore certain provisions of the current Technical Specifications that were not properly incorporated in Amendment Nos. 127 and 116. Changes are proposed that would revise Technical Specification (TS) TS 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)," and TS 5.5.2.13, "Diesel Fuel Oil Testing Program."

Specifically, the proposed change corrects the number of instruments required to measure T_{Cold} and T_{Hot} from two per loop to two (with one cold leg RDT [RTD] and one hot leg RTD per steam generator) in TS 3.3.11. Also, the proposed change revises diesel fuel oil testing requirements specified in TS 5.5.2.13. In particular, the viscosity limit specified in the Administrative Controls is revised to the correct range per ASTM–D975–81, which is consistent with the Bases to SR 3.8.3.3. Also, a typographical error in paragraph b is corrected. The ASTM standard for sampling fuel oil is restored to ASTM–D4057–81.

These provisions are contained in the current Technical Specifications, TS 3/4.3.3.6, "Accident Monitoring Instrumentation," and in SR 4.8.1.1.2.c of TS 3/4.8.1.1, "A.C. Sources."

Operation of the facility would remain unchanged as a result of the proposed changes. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will restore provisions of the current Technical Specifications for SONGS Units 2 and 3. The proposed change would correct the number of instruments required to be operable to measure T_{Cold} and T_{Hot} from two per loop to two (with one cold leg RDT [RTD] and one hot leg RTD per steam generator), and revise diesel fuel oil testing requirements.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will restore provisions of the current Technical

Specifications for SONGS Units 2 and 3 and make certain changes for clarity. Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union

operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 3, 1996, as superseded by application dated June 25, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 26th day of June 1996.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16877 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 1, 8, 15, and 22, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 1

Tuesday, July 2

10:00 a.m.
Briefing on Alternatives for Regulating Fuel Cycle Facilities (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Wednesday, July 3

10:00 a.m.
Briefing on BPR Project on Redesigned Material Licensing Process (Public Meeting) (Contact: Pat Rathbun, 301–415–7178)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of July 8—Tentative

Wednesday, July 10

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of July 15—Tentative

There are no meetings scheduled for the Week of July 15.

Week of July 22—Tentative

There are no meetings scheduled for the Week of July 22.

ADDITIONAL INFORMATION: By a vote of 3–0 on June 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Innovative Weaponry, Inc.—Request for a Hearing" (Public Meeting) be held on June 26, and on less than one weeks' notice to the public.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

Dated: June 28, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–17011 Filed 6–28–96; 2:29 pm]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529 and 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3; Issuance of Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR § 2.206 received from Mr. Thomas J. Saporito, Jr., on behalf of Florida Energy Consultants, Inc., dated May 27, 1994, as supplemented on July 8, 1994, for the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3.

In a letter dated May 27, 1994, the Petitioner requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 to modify, suspend, or revoke the operating licenses for Palo Verde; (2) issue a notice of violation against the licensee for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde, during his testimony at a Department of Labor hearing (ERA Case No. 92–ERA–030) and, in the interim, require that he be relieved of any authority over operations at Palo Verde; (4) investigate the licensee's statements in a letter of August 10, 1993, from Mr. Conway to the former NRC regional administrator, Mr. Bobby H. Faulkenberry, that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde and that, as a result, he lacks trustworthiness and reliability for access to Palo Verde; (5) investigate the circumstances surrounding the February 1994 termination of licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the licensee because he engaged in "protected activity" during the course of his employment; (6) require the licensee to respond to a "chilling effect" letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and to specify whether any measures were taken to ensure that his termination did not have a chilling effect at Palo Verde; and (7) initiate appropriate actions to require the licensee to immediately conduct eddy current testing on all steam generators at Palo Verde because the steam generator tubes were recently found to be subject to cracking.

In a letter dated July 8, 1994, the Petitioner raised six additional issues. This supplemental Petition asked the NRC to (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 for the modification, suspension, or revocation of the Palo Verde operating licenses for Units 1, 2, and 3; (2) modify the Palo Verde operating licenses to require operation at 86-percent power or less; (3) require the licensee to submit a No Significant Hazards safety analysis

to justify operation of those units above 86-percent power; (4) take immediate action (e.g., by confirmatory order) to make the licensee reduce operation to 86-percent power or less; (5) require the licensee to analyze a design-basis steam generator tube rupture (SGTR) event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100; and (6) require the licensee to demonstrate that its emergency operating procedures for SGTR events are adequate and that the plant operators are sufficiently trained in emergency operating procedures.

The Director of the Office of Nuclear Reactor Regulation has determined that requests 1, 2, 3, 5, and 6 of the July 8, 1994, Petition supplement should be denied for the reasons stated in the "Director's Decision Under 10 CFR § 2.206" (DD–96–08), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004. The Petitioners' two requests for immediate action (Request 7 of the May 27, 1994 Petition and Request 4 of the July 8, 1994, Petition supplement) were denied in a letter dated July 26, 1994. The remaining requests are under consideration and will be addressed in a separate decision. A Director's Decision (DD–96–04) regarding Requests 1 through 6 in the Petition of May 27, 1994, was issued under separate cover letter on June 3, 1996.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR § 2.206. As provided by the regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 25th day of June 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On May 27, 1994, Florida Energy Consultants, Inc. (FEC), by and through Thomas J. Saporito, Jr. (Petitioners), submitted a Petition pursuant to 10 CFR § 2.206 to the U.S. Nuclear Regulatory Commission (NRC). The Petition requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 to modify, suspend, or revoke the operating licenses of Arizona Public Service Company (licensee or APS) for Palo Verde Nuclear Generating Station (PVNGS or Palo Verde); (2) issue a notice of violation against the licensee for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde, during his testimony at a Department of Labor hearing (ERA Case No. 92–ERA–030) and, in the interim, require that he be relieved of any authority over operations at Palo Verde; (4) investigate the licensee's statements in a letter dated August 10, 1993, from Mr. Conway to the former NRC regional administrator, Mr. Bobby H. Faulkenberry, that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde and that, as a result, Mr. Saporito lacks trustworthiness and reliability for access to Palo Verde; (5) investigate the circumstances surrounding the February 1994 termination of licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the licensee because he engaged in "protected activity" during the course of his employment; (6) require the licensee to respond to a "chilling effect" letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and specify whether any measures were taken to ensure that his termination did not have a chilling effect at Palo Verde; and (7) initiate appropriate actions to require the licensee to immediately conduct eddy current testing (ECT) on all steam generators (SGs) at Palo Verde because the SG tubes were recently found to be subject to cracking.

As the bases for these requests, the Petitioners allege that (1) a show-cause proceeding is necessary (a) because the public health and safety concerns alleged are significant and (b) to permit public participation to provide NRC with new and relevant information; (2) past practices of TAG demonstrate that employees of TAG were retaliated against for having raised safety concerns while employed at Palo Verde; (3) citations to testimony from transcripts and newspaper articles (appended as exhibits to the Petition) demonstrate that Mr. Conway's testimony is not credible; (4) statements in the letter of August 10, 1993, are inaccurate and materially false and characterize Mr. Saporito as an individual lacking trustworthiness and reliability for access to Palo Verde, and that such negative characterizations have caused the nuclear industry to blacklist him from continued employment, all in retaliation for his raising safety concerns about operations at Palo Verde; thus, the Petitioners ask that these statements be rescinded; (5) an investigation into the termination of Mr. Straub is warranted in view of the fact that the licensee has engaged in similar illegal conduct in the past for which the NRC has required the licensee to pay fines; (6) Mr. Straub is entitled to reinstatement with pay and benefits pending the NRC's investigation into his termination to offset the chilling effect his termination had on the Palo Verde workforce; and (7) in addition to cooling tower problems, the stress-corrosion and cracking in the SGs is a recurring problem of which the licensee is aware and has failed to properly correct, so that the NRC should be concerned about proper maintenance of safety systems and equipment at Palo Verde.

On July 8, 1994, the Petitioners filed a supplemental Petition (Petition supplement) raising six additional issues. The Petitioners requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 for the modification, suspension, or revocation of the Palo Verde operating licenses for Units 1, 2, and 3; (2) modify the Palo Verde operating licenses to require operation at 86-percent power or less; (3) require the licensee to submit a No Significant Hazards safety analysis [1] to justify operation of those units above 86-percent power; (4) take immediate action (e.g., by confirmatory order) to require the licensee to reduce operation to 86-percent power or less; (5) require the licensee to analyze a design-basis steam generator tube rupture (SGTR) event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100; and (6) require the licensee to demonstrate that its emergency operating procedures (EOPs) for steam generator (SG) tube rupture events are adequate and the plant operators are sufficiently trained in EOPs.

As bases for these requests, the Petitioners allege that (1) the licensee experienced an SGTR in the free-span area on Unit 2 on March 14, 1993; (2) during a January 1994 inspection on

[1] Section 50.91 of the Commission's regulations provides that at the time a licensee requests an amendment it must provide the NRC its analysis of the issue of no significant hazards consideration, using the standards of Section 50.92.

Unit 2, 85 axial indications were identified, the longest indication being 7.5 inches; (3) as of May 1994, 28 axial indications were found at Unit 2 and 9 axial indications were found at Unit 1 (more extensive testing will confirm the existence of circumferential crack indications in the expansion and transition areas); (4) in May 1994, SG sludge from Units 1 and 2 indicated a lead content of 4,000 to 6,000 ppm, which is unusually high, accelerates the crevice corrosion process, and is believed to be caused by a feedwater source deficiency; (5) in eight instances, the licensee failed to properly implement operational procedures during the SGTR event on March 14, 1993; (6) the licensee's failure to comply with approved procedures in the above-mentioned event is indicative of a problem plant that warrants further NRC action; (7) in four instances, the NRC is aware of additional licensee weaknesses regarding the SGTR event; (8) the licensee cannot ensure that the radiation dose limits are satisfied for applicable postulated accidents; (9) the licensee is not maintaining an adequate level of public protection in that the offsite dose limits will be exceeded during an SGTR; (10) the licensee cannot demonstrate that a Palo Verde unit can safely be shut down and depressurized to stop SG tube leakage before a loss of reactor water storage tank inventory; (11) SG tubes are an integral part of the reactor coolant boundary and tube failures could lead to containment bypass and the escape of radioactive fission products directly into the environment and, therefore, must be carefully considered by NRC and the licensee; (12) the licensee cannot demonstrate compliance with 10 CFR Part 50, Appendix A, which establishes the fundamental requirements for SG tube integrity; (13) the licensee has failed to comply with NRC recommendations under NUREG–0800 to show that in the case of an SGTR event, "the offsite conditions and single failure do not exceed a small fraction of the limits of 10 CFR Part 100"; and (14) the licensee has posed an unacceptable risk to public health and safety by raising power on all three Palo Verde units above 86 percent, considering the severe degradation of the SG tubes.

In a letter dated July 26, 1994, I acknowledged receipt of the Petition of May 27, 1994, and the Petition supplement of July 8, 1994, and denied the Petitioners' two requests for immediate action. The Petitioners requested the initiation of actions to require the licensee to immediately conduct ECT on all SGs at Palo Verde (Request 7 of the May 27, 1994, Petition) and immediate action to cause the licensee to reduce operation to 86-percent power or less (Request 4 of the July 8, 1994, Petition supplement). Although these two requests for immediate action were denied, the concerns raised by the Petitioners regarding their requests for ECT and reduced power operation are addressed in this Decision.

The staff informed the Petitioners that the remaining requests were being evaluated under 10 CFR § 2.206 of the Commission's regulations and that a response would be forthcoming. This Decision addresses the Petitioners' concerns about ECT (Request 7 of the May 27, 1994, Petition), steam generator tube integrity, and emergency operating procedures for SGTR events and the remaining requests (Requests 1, 2, 3, 5, and 6) of the July 8, 1994, supplement. The staff has completed its review of the remaining issues in your supplemental Petition. A Director's Decision (DD–96–04) regarding Requests 1 through 6 in the Petition of May 27, 1994, was issued under separate cover letter on June 3, 1996. A discussion of the Director's Decision follows.

II. Background

The Petitioners' concerns addressed in this Decision appear to be based largely on the March 1993 SGTR event and the NRC staff findings concerning that event set forth in the NRC Augmented Inspection Team (AIT)[2] report. Palo Verde Unit 2 experienced an SGTR event in SG No. 2 on March 14, 1993. At the time, the unit was at about 98-percent power. The plant operators manually tripped the reactor, declared an Unusual Event,[3] which was subsequently upgraded to an Alert,[4] and entered the PVNGS Functional Recovery Procedure[5] to mitigate the event. The plant was cooled down and depressurized, and the event was terminated when Mode 5[6] was achieved on March 15, 1993.

During the period March 17–25, 1993, an NRC AIT conducted an inspection at PVNGS Unit 2. Overall, the AIT concluded that the response to the SGTR succeeded in bringing the unit safely to a cold-shutdown condition and limiting the release of radioactivity so that there was no threat to public health and safety. However, the AIT identified weaknesses in the licensee's implementation of emergency plan actions, including event classification, activation of the emergency response facilities, and prompt assignment of tasks to onsite personnel. Weaknesses were also found in the procedures, equipment, and training associated with responding to an SGTR event. The AIT inspection was documented in NRC Inspection Report No. 50–529/93–14, issued on April 16, 1993.

Enforcement action resulted from the AIT inspection in several areas (e.g., emergency preparedness, chemistry and radiation monitoring, and emergency operating procedures). All violations were issued as Severity Level IV.[7]

The NRC issued a confirmatory action letter[8] (CAL) to the licensee on June 4, 1993, for Unit 2. The NRC issued a safety evaluation by letter dated August 19, 1993, concluding that Unit 2 could safely resume operation for 6 months, the interval between steam generator tube inspections. This safety evaluation closed the CAL.

The NRC issued a second CAL[9] on October 4, 1993, for Unit 3 (amended on

[2] An AIT is an NRC inspection team composed of experts from the responsible NRC Regional Office augmented by personnel from NRC Headquarters and others Regions with special technical qualifications. The purpose of an AIT is to determine the causes, conditions, and circumstances relevant to an event and to communicate its findings, safety concerns, and recommendations to NRC management.

[3] The lowest level of emergency classification as delineated in 10 C.F.R Part 50, Appendix E.

[4] The second lowest level of emergency classification as delineated in 10 C.F.R. Part 50, Appendix E.

[5] PVNGS Procedures providing operators' actions for responding to design basis events.

[6] The operational mode defined as cold shutdown in plant technical specifications.

[7] *See* EA 93–119 (issued July 1, 1993) and EA 93–039 (issued April 27, 1993). At the time, violations were categorized in terms of five levels of severity. Severity Level I and II violations were of very significant regulatory concern. Severity III violations were cause for significant regulatory concern. Severity Level IV violations were less serious but were of more than minor concern. Severity Level V were of minor safety or environmental concern. General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, Section IV. Effective June 30, 1995, the NRC's Enforcement Policy, as published in the **Federal Register** (60 FR 34381), is set forth in NUREG–1600.

[8] This CAL set forth commitments made by the licensee to the NRC staff on June 2, 1993, regarding the SGTR event on Unit 2. In the CAL, the staff confirmed the licensee's commitment (1) to notify the NRC prior to completion of ECT on the Unit 2 SGs; (2) to include the proposed operating interval to the next SG tube inspection in its safety analysis; and (3) not to restart Unit 2 until the NRC concurs with the restart of the facility.

[9] In this CAL, the staff confirmed the licensee's commitment to (1) shut down Unit 3 for ECT inspection of both SGs; (2) continue the review of Unit 3 ECT data to identify indications that were not identified in refueling outage 3R3 by bobbin coil ECT and to provide a written summary of the review; (3) continue to implement the Unit 1 SG inspection plan (SGIP); (4) implement changes to emergency operating procedures (EOPs), operator training, and leakage monitoring; and (5) continue to operate Unit 3 to take advantage of some of the preventive measures that can be taken to reduce

November 8 and 23, 1993), confirming the commitments made by the licensee in its September 29, 1993, letter. By letter dated December 3, 1993, the licensee reported that it had completed the actions discussed in the CAL. Satisfied that the licensee had completed the conditions of the CAL, the staff closed the CAL by letter dated April 1, 1994.

The licensee voluntarily reduced power to approximately 86-percent power in the fall of 1993 to minimize steam generator degradation. The licensee evaluated and implemented several improvements to the operation of its steam generators, one of which was a reduction in the reactor coolant system hot-leg temperature. The units were all returned to 100-percent power by the fall of 1994.

Following a midcycle outage on Unit 2 and midcycle and refueling outages on Unit 3, the NRC issued a safety evaluation on June 22, 1994, which concluded that both Unit 2 and 3 could safely operate for 6 months between steam generator tube inspections. Since that time, there have been additional midcycle outages on Units 2 and 3 and a refueling outage on all three units. Eddy current inspection results and outage planning for the Units currently support the following operating intervals between inspections: Unit 1, 16 months; Unit 2, 12 months; and Unit 3, 11 months.

III. Discussion

A. Eddy Current Testing on All Steam Generators at Palo Verde

Item 7 of the Petitioners' letter of May 27, 1994, requested the NRC to require the licensee to conduct immediate ECT on all SGs at Palo Verde to ascertain the integrity and life expectancy of the SG tubes. Although, as indicated above, this request for immediate action has been denied, the Petitioners' concerns regarding ECT are addressed below.

The Petitioners assert as a basis (Petition Basis 7) for their request concerning ECT that the licensee's SGs have recently developed cracks in the free-span portion of their internal structure, that tube stress corrosion and cracking is a recurring problem in SGs, and that there is a risk the emergency cooling system will be unable to prevent the melting of the fuel because of tube ruptures.[10]

The licensee has completed at least two eddy current inspections on each of the Palo Verde units since the SGTR event in March 1993. The staff issued safety evaluations (SEs) that addressed Unit 2 and 3 operating intervals by letters dated August 19, 1993, and June 22, 1994.[11] These SEs were based on the results of the licensee's eddy current inspections of Unit 1 in October 1993, of Unit 2 in May 1993 and January 1994, and of Unit 3 in December 1993 and May 1994. In summary, the staff concluded that Units 2 and 3 could be safely operated for up to 6 months between SG eddy current inspections. The licensee conducted five of these "minicycles" [12] (three on Unit 2 and two on Unit 3), thereby obtaining extensive SG eddy current data, which it used to validate models used for analysis. In May 1995, the licensee submitted a report supporting a cycle length of up to 11 months on Unit 3. Unit 1 completed a 16-month operating cycle in June 1995. After meeting with the licensee, the staff approved a Unit 3 cycle length of 11 months in a meeting summary dated August 22, 1995. During a September 20, 1995, meeting with the staff, the licensee presented its submittal and arguments to support a 12-month cycle for Unit 2. The staff incorporated data from the most recent Unit 3 steam generator inspection in its evaluation of the licensee's conclusion regarding a 12-month operating cycle on Unit 2. The staff approved the 12-month operating cycle by letter dated March 5, 1996.

In summary, the licensee performed the necessary eddy current inspections, and the staff extensively reviewed and approved Palo Verde SG eddy current inspection results and continues to review additional information regarding the integrity of the SG tubes. On the basis of its review of ECT, the staff has concluded that the Petitioners' concerns regarding the need for ECT have been satisfactorily addressed by the licensee and that no further action by the NRC staff is warranted.

B. Operation Above 86–Percent Power

Requests 1, 2, 3, and 4 of the Petition supplement, in essence, request actions requiring the Palo Verde licenses to be modified to require operation at 86-percent power or less.[13]

As bases for these requests, the Petitioners assert that on March 14, 1993, Palo Verde Unit 2 had an SGTR in the free-span section between the tube supports and that in January 1994, an inspection of Palo Verde's Unit 2 SGs found 85 axial indications (longest indication, 7.5 inches) (Petition supplement, Basis 2); and that as of May 1994, 28 axial indications were found at Unit 2 and 9 axial indications found at Unit 1. The Petitioners believe that more extensive testing will confirm the existence of circumferential crack indications in the expansion-transition area (Petition supplement, Basis 3). The Petitioners also assert that in May 1994, Units 1 and 2 SG sludge indicated a lead content of 4,000–6,000 ppm, which would accelerate the crevice corrosion cracking process (Petition supplement, Basis 4). The Petitioners also stated that the operation of Palo Verde units at above 86-percent power is unacceptable due to severe degradation of the SG tubes (Petition supplement, Basis 14).

Axial and Circumferential Steam Generator Tube Indications

With regard to the Petitioners' concern about identifiable axial indications (Petition supplement Basis 2), it is correct that 85 axial indications in the free-span area (longest indication, 7.5 inches) were discovered on SG tubes at Palo Verde Unit 2 during the January 1994 inspection. However, this number was apparently based on preliminary information from the licensee's eddy current inspection during the January 1994 eddy current inspection. The licensee's report of March 8, 1994, stated that actually 330 free-span axial indications were discovered during the Unit 2 first midcycle outage: 22 in SG 1 of Unit 2 (SG 21) and 308 in SG 2 of

outside-diameter stress corrosion cracking (ODSCC) rates.

[10] The Petitioner also mentioned cooling tower problems in this basis, stating that "the NRC should be concerned about proper maintenance of safety systems and equipment there." The cooling towers at Palo Verde are not safety-related systems. If the cooling towers of a unit were incapacitated, the unit might operate less efficiently, but that would be an economic penalty, rather than a safety problem. The Petitioners did not provide any specific examples of problems with the cooling towers, though the staff is aware of the general maintenance problems the licensee has had with the cooling towers. This issue was the subject of a previous Director's Decision, Arizona Public Service Company, (Palo Verde Nuclear Generating Station, Units 1, 2, and 3, DD–92–1, 35 NRC 133, 137 (1992), which found no substantial nuclear safety concern with the condition of the cooling towers.

[11] Unit 1 was not directly addressed in the SEs because no free span axial indications were identified on Unit 1 at the time.

[12] The Palo Verde operating cycle is normally 16–18 months.

[13] The specific request for immediate action to make the licensee reduce operation to 86-percent power or less (Request 4) was denied by letter of July 26, 1994. With regard to the request (Request 3) to require the licensee to submit a No Significant Hazards safety analysis to justify operation of the units above 86-percent power, the licensee is not required by the NRC regulations to submit a no significant hazards analysis, since a TS change was not required to resume operation above 86-percent power. The staff did, however, review a no significant hazards analysis related to operation of the Units at 100-percent power with a reduced hot-leg temperature. These TS changes were submitted by the licensee on February 18, 1994, for Units 1 and 3; and on July 1, 1994, for Unit 2. The NRC staff review of these TS changes and support for operation at a power level of 100 percent is discussed at page 17, *infra*.

Unit 2 (SG 22). Although a number of axial indications were detected by the licensee, it is not the number of indications that is of a safety concern but rather the severity of the indications (i.e., severity in terms of whether the tube indication had adequate structural and leakage integrity). As noted in the Petition supplement, the longest indication was 7.5 inches long. The safety significance of this indication, as with any eddy current indication, depends not only on the length of the indication but also on the depth of the indication. To assess the safety significance and/or severity of an indication, licensees size the indications in terms of length, depth, and/or voltage.[14] However, eddy current testing methods have not been qualified for determining the depth of stress corrosion cracks. Where qualified eddy current methods do not exist, licensees may pursue alternative methods such as in situ pressure testing[15] to further confirm or assess the condition of the tube (i.e., to confirm that the tube indication could withstand the required pressure loadings; thereby demonstrating that the tube had adequate structural integrity). The licensee did select nine tubes for in situ pressure testing during the outage. The 7.5 inch long indication did not meet the licensee's screening criteria for selecting the more severe indications. The screening criteria, discussed in the NRC staff's SE of June 22, 1994, considered the length, depth, and/or voltage of the indication. All nine tubes satisfactorily passed the in situ pressure test thereby providing reasonable assurance that the tube indications had adequate structural integrity. Furthermore, all tubes with axial free span indications were plugged before Unit 2 was returned to operation.

The Petitioners also assert as of May 1994, 28 axial indications were found on Unit 2 and 9 axial indications found at Unit 1 and that more extensive testing would confirm the existence of circumferential crack indications in the expansion transition areas (Petition supplement, Basis 3). These numbers are incorrect. Neither Unit 1 nor Unit 2 was in an outage conducting eddy current examinations in May 1994. Unit 1 had no axial indications identified as of this date. The Unit 2 data is described above. Unit 3 was in an outage at this time and identified a total of 20 axial indications. Regarding the performance of more extensive testing to confirm the existence of circumferential crack indications at the expansion-transition area, the licensee has performed inspections in this region. In general, the licensee's steam generator tube inspection program consists of an initial inspection sample which is expanded, if necessary, based on the initial inspection sample results. The licensee has been examining the expansion transition locations with a motorized rotating pancake coil (MRPC) probe since, at least, 1993. These examinations permit the licensee to detect circumferential crack indications. In its SEs and meeting summaries, the NRC staff has reviewed the licensee's results from its MRPC inspections and found them acceptable.[16] To date, Palo Verde Units 2 and 3 have each exhibited a small number of circumferential crack indications per Unit. Unit 1 has exhibited the most extensive circumferential cracking both in terms of number of indications and the severity of the indications when compared to Units 2 and 3. Nonetheless, the staff concluded in a meeting summary dated October 19, 1994, that operating Unit 1 to the end of the operating cycle (April 1995) did not pose an undue risk to public health and safety in view of (1) the absence of detectable axial free-span cracks during the previous refueling outage inspection; (2) the improved secondary water chemistry performance at Palo Verde; (3) the reduced hot-leg temperature, which is expected to reduce crack growth rates; and (4) the implementation of enhanced MRPC inspection techniques at the expansion transition locations. The licensee will continue to perform extensive SG inspections at the end of each operating cycle to ensure continued safe operation of SGs.

Lead Content in Steam Generator Tube Sludge

The Petitioners assert without providing any supporting basis that the SG sludge of Units 1 and 2 has a lead content of 4,000–6,000 ppm (Petition supplement, Basis 4). The licensee performed sludge analyses during two consecutive Unit 1 outages. The data, which were reported in a letter from the licensee dated November 2, 1993, indicate a lead content of 78 ppm (from Unit 1, Refueling 3) and 98 ppm (Unit 1, Refueling 4).[17] Sludge samples were obtained from both Unit 2 SGs after the March 1993 SGTR event. The data were documented in the licensee's report, "Equipment Root Cause of Failure." Both the licensee and outside contractors analyzed the samples; all analyses indicated a lead content of 100 ppm or less.

The NRC staff conducted two Palo Verde chemistry inspections (Inspection Reports 94–15 and 94–27 on Units 50–528/50–529/50–530). The staff reviewed films and sludge for their lead content, and the data were consistent with the licensee's reports. Inspection Report 50–528/50–529/50–530/94–15 specifically referred to the inspector's determination to note "whether lead was detected, because of recent work which indicated it may have a deleterious effect." In referring to examinations of the burst region[18] of pulled tubes, the report stated that insignificant levels of lead were found in the sludge and in the films examined.

Inspection Report 50–528/50–529/50–530/94–15 also reviewed the licensee's secondary water chemistry control program.[19] The NRC inspection team found that the program requirements had fully conformed to the EPRI guidelines throughout Palo Verde's operating history with respect to chemical parameters, analytical frequency, limits for critical parameters, and required actions when critical parameters were exceeded. In summary, the Petitioners' assertions regarding lead content have not been substantiated and do not agree with available data. The licensee has verified[20] that lead content in both Units 1 and 2 SGs is 100 ppm or less, not 4,000–6,000 ppm as asserted by the Petitioners. Additionally, NRC Inspection Reports 94–15 and 94–27 on Units 50–528/50–529/50–530 have not

[14] Voltage is electrical force or potential difference. Voltage measurements can be used to estimate the severity of an indication.

[15] In situ pressure tests were conducted to determine whether the tubes could withstand the pressure loading specified in NRC Regulatory Guide 1.121 (i.e., whether the SG tubes have adequate structural integrity).

[16] The Staff's reviews are documented in SEs dated August 19, 1993, and June 22, 1994, and also in meeting summaries dated August 22, 1995, March 22, 1994, October 19, 1994, August 22, 1995, and September 20, 1995.

[17] During the Unit 2 midcycle outage in early 1994, the SGs were chemically cleaned before sludge lancing; therefore, the composition of the sludge was not tested.

[18] Burst region refers to the section of the crack in a pulled tube that is exposed as the result of a burst or rupture due to an applied pressure either during plant operation or laboratory testing.

[19] The NRC inspection team compared Electric Power Research Institue (EPRI) NP–6239, "PWR Secondary Water Chemistry Guidelines," Revisions 1 through 2, and EPRI TR–101230, "Interim PWR Secondary Water Chemistry Recommendations for IGA/IGSCC Control," with the licensee's secondary water chemistry control program for PVNGS.

[20] PVNGS performed its own inspections and also utilized contractors, ABB-Combustion Engineering (ABB-CE) and Babcock and Wilcox Nuclear Technologies (BWNT), to perform metallurgical examinations. The inspections revealed minor quantities of lead in surface deposits and films. See NRC Inspection Report 50–528/50–529/50–530/94–15, dated June 23, 1994.

revealed any information about elevated lead content.

Steam Generator Tube Degradation and Operation at a Reduced Power Level

The Petitioners also assert that the operation of Palo Verde units at above 86-percent power is unacceptable due to severe degradation of SG tubes (Petition supplement, Basis 14). In December 1993, the licensee volunteered to reduce power in all three units to approximately 86 percent as an interim measure to curtail steam generator degradation. The primary purpose of this administrative power limit was to operate with a lower reactor coolant system hot-leg temperature in order to reduce tube degradation. This specific power level had been selected because it provided for a T_{hot} that approximated the value that would be implemented if the licensee's proposed TS changes for operating at 100% power with a reduced T_{hot} were approved by the NRC. Additionally, the licensee's thermal-hydraulic analysis indicated that, at this reduced power level, the potential for freespan tube degradation from corrosion is reduced. The licensee took this action voluntarily to minimize further degradation of the SGs until corrective, mitigative, and preventive actions could be implemented to reduce steam generator tube degradation.

On June 7, 1994, the NRC issued a TS change for Units 1 and 3 that permitted the licensee to operate at full power with a lower T_{hot} temperature.[21] The Unit 2 TS change was reviewed separately because the licensee was continuing to perform analyses arising from the SG tube plugging in Unit 2. The staff issued this TS change on August 12, 1994.[22] These TS changes permitted operation at a power level of 100 percent as did the staff's post-March 1993 SGTR SEs dated August 19, 1993, and June 22, 1994, regarding the length of operating cycles of the Palo Verde units. Furthermore, as stated above, the staff did not impose any power restrictions or limits on the licensee.

In summary, the Petitioners' concerns regarding operation of the Palo Verde units above 86-percent power (including bases relating to the March 1993 SGTR event, identification of axial and circumferential steam generator tube indications, alleged elevated lead contents in steam generator sludge) have been satisfactorily addressed, and do not warrant any further action by the NRC staff.

[21] Noticed in the Federal Register on June 22, 1994 (59 Fed. Reg. 32240).

[22] Noticed in the Federal Register on August 31, 1994 (59 Fed. Reg. 45038).

C. Need To Reanalyze the Design-Basis SGTR Event

Request 5 (of the Petition supplement) is that the NRC require the licensee to analyze a design-basis SGTR event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100. The staff requires an analysis such as this to be completed for all pressurized-water reactors (PWRs) and documented in a final safety analysis report (FSAR) before plant operation. The licensee complied with this requirement.[23]

The Petitioners assert in the basis (Petition supplement, Bases 8, 9, 10, 11 and 13) that the licensee cannot ensure the dose limits are satisfied for applicable postulated SGTR events; the offsite dose limits would be exceeded during an SGTR event and adequate protection to the public would not be maintained; the licensee cannot demonstrate that the plant can be safely shut down and depressurized to stop SG tube leakage before reactor water storage tank inventory is lost; the NRC and the licensee must carefully consider SGTR; and "the licensee has failed to comply with NRC requirements under NUREG–0800 insofar as the licensee is required to analyze the consequences of a design basis SGTR event to show that the offsite conditions and single failure do not exceed a small fraction of limits of 10 CFR Part 100."

The AIT report documents findings regarding the Unit 2 SGTR event of March 1993. The report stated that the plant was safely brought to cold shutdown and no radioactivity was released off site. Additionally, the staff's SE, dated August 19, 1993, assessed a single SGTR event and single and multiple tube ruptures induced by a major secondary-side rapid depressurization and concluded that the radiological consequences were within applicable limits.[24] Finally, in a memorandum dated January 26, 1996, the staff performed a confirmatory review of the licensee's updated SGTR event analysis, submitted with Revision 6 to the FSAR (March 10, 1994), and concluded that the results are acceptable. The Petitioners also assert in the basis (Petition supplement, Basis 12) that the licensee cannot demonstrate compliance with certain criteria of Appendix A to 10 CFR Part 50,[25] which establishes the fundamental requirements for steam generator tube integrity. However, the Petitioners have failed to provide any details or support for this assertion.

In summary, on the basis of the NRC staff's review of the licensee's design-basis SGTR event and more recent confirmatory review, the staff has concluded that the Petitioners have not presented a basis for further NRC action.

D. Adequacy of Training and Procedures for an SGTR Event

Regarding Request 6 of the Petition supplement, that the NRC require the licensee to demonstrate that its emergency operating procedures (EOPs) for SGTR events are adequate and the plant operators are sufficiently trained in EOPs, the staff has already taken sufficient action. The Petitioners allege (Petition supplement, Bases 5, 6, and 7, respectively) that the licensee failed to properly implement operational procedures regarding the SGTR event of March 14, 1993, citing eight instances in Basis 5[26]; that the licensee's failure to comply with approved procedures in this event is indicative of a problem plant that warrants further NRC attention (Basis 6); and that the NRC is aware of additional licensee weaknesses regarding the SGTR event, citing four instances in Basis 7.[27] These bases

[23] Updated Final Safety Analysis Report (UFSAR) Section 15.6.3.1.3.2 describes the radiological consequences of an SGTR, and the results are shown in UFSAR Table 15.6.3–5. The staff initially reviewed PVNGS's UFSAR in November 1981.

[24] In 10 CFR Part 100, acceptance criteria are specified for the dose analyzed during initial plant licensing at the exclusion area boundary (EAB) and low population zone (LPZ) for design-basis accidents. The dose in 2 hours at the EAB is not to exceed 25 rem to the whole body or 300 rem to the thyroid. The dose in 30 days at the boundary of the LPZ is not to exceed 25 rem to the whole body or 300 rem to the thyroid. The staff reviewed the licensee's Unit 2 steam generator tube rupture analysis, submitted by letter dated July 18, 1993, and concluded that the methods used by the licensee were acceptable. See the NRC staff's safety evaluation dated August 19, 1993.

The Petitioners assert that the licensee has failed to comply with NUREG–0800 requirements regarding consequences of a design basis SGTR event. However, NUREG–0800 does not set forth requirements; rather it sets forth acceptable approaches to satisfying NRC requirements.

[25] The Petitioners reference portions of General Design Criteria (GDC) 14, 15, 30, and 31 of Appendix A to 10 CFR Part 50.

[26] The Petitioners assert (Petition supplement, Basis 5) that the licensee (a) failed to classify the event in accordance with the EOPs, (b) failed to actuate the Emergency Operations Facility for the 1-hour time, (c) failed to activate the Emergency Response Data System, (d) violated 10 CFR § 50.72 requirements, activation of the Emergency Response Data System, (e) failed to take prompt corrective actions to repair the condenser vacuum pump exhaust radiation monitor, (f) failed to obtain required approvals for alarm setpoint change on waste gas area combined ventilation exhaust monitor, (g) failed to fully implement an alarm response procedure and, (h) failed to check the owner-controlled area.

[27] The Petitioners assert (Petition supplement, Basis 7) that the licensee's (a) alert and alarm setpoints for condenser vacuum pump exhaust and main steam line radiation monitor limits appear to be based on offsite dose limits rather on an SGTR

Continued

largely concern areas the staff reviewed after the SGTR event on March 14, 1993. Specifically, the Petitioners repeated several of the procedural and operator weaknesses that were described and evaluated in the staff's AIT report (Inspection Report 50–529/93–14, dated April 16, 1993).[28] Specifically, the AIT report stated that the use of a diagnostic logic tree caused the operators to misdiagnose the SGTR event twice and subsequently enter a Functional Recovery Procedure, contributing substantially to the delay in isolating the faulted steam generator. The staff concluded in its safety evaluation of August 19, 1993, that the licensee's modifications to the EOPs and the subsequent operator training provide sufficient enhancement for both diagnosis and mitigation of various SGTR scenarios.

Additionally, the licensee recently revised its EOPs to make them consistent with Combustion Engineering Owners Group (CEOG) guidance (CEN 0152, Rev. 3[29]). NRC Inspection Report 50–528/50–529/50–530/95–12, dated July 27, 1995, documents the staff's observations on the "high intensity team" training conducted for each crew in preparation for implementing the EOPs. In the inspection report, the staff stated that the EOPs enhanced crew performance and allowed for greater flexibility in responding to events. As an example, during the simulator-based SGTR scenario, the crew was able to isolate the faulted SG within 14 minutes of the start of the event. In contrast, during the March 1993 Unit 2 SGTR event, operators took about 3 hours to isolate the faulted SG, partly because of restrictions in the EOPs in use at the time. The staff will further evaluate the effectiveness of EOPs during future licensed operator examinations.

On the basis of its review of the Petitioners' request that the licensee demonstrate that its EOPs for SGTR events are adequate and that plant operators are sufficiently trained in EOPs, the staff has concluded that the Petitioners have not presented a basis for further NRC action.

III. Conclusion

The institution of proceedings in response to a request pursuant to Section 2.206 is appropriate only when substantial health or safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This standard has been applied to the concerns raised by the Petitioners to determine whether the actions requested by the Petitioners are warranted. With regard to the specific requests made by the Petitioners discussed herein, the NRC staff finds no basis for taking additional actions beyond those described above. Accordingly, the Petitioners' requests for additional actions pursuant to Section 2.206, specifically Requests 1, 2, 3, 5, and 6 submitted in the Petitioners' supplement dated July 8, 1994, are denied. Accordingly, no action pursuant to Section 2.206 is being taken in this matter.

A copy of this Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR § 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 25th day of June 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

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event, (b) simulator alarms occur within 2–3 minutes of an SGTR event, contrary to control room indications, (c) plant staff failed to fully respond to assembly notification, (d) plant staff failed to perform a formal evaluation of the safety significance of an abnormal crack growth in the Unit 2 SG.

[28] The licensee addressed the issues raised in the AIT report by implementing the necessary procedural changes and providing training. For example, with regard to the AIT finding (summarized by the Petitioners) regarding differences between alarm response on the simulator and in the control room, the staff's safety evaluation of August 19, 1993, stated that "the simulator has been modified to more realistically model the plant, particularly the response of the radiation monitoring system to an SGTR."

[29] A letter from the NRC to Combustion Engineering dated August 2, 1988, stated that, "pending NRC final review and approval, CE facilities may base their plant-specific emergency operating procedures on Revision 3 of CEN–152. Should future NRC review reveal modifications to Revision 3 to be necessary, CE facilities would be expected to update their procedures to reflect the identified changes. Schedules for such changes should be based on perceived safety significance of the changes." The objective of the CEN–152 report is to describe the CEOG emergency procedure guidelines system. The report contains the methodology used to develop and validate the licensee's emergency procedure guidelines and information on the implementation of guidelines.

POSTAL SERVICE

Specifications for Postal Security Devices and Indicia (Postmarks)

AGENCY: Postal Service.

ACTION: Notice of proposed specifications with request for comments.

SUMMARY: Historically, postage meters have been mechanical and electromechanical devices that (1) maintain through mechanical or electronic "registers" (postal security devices) an account of all postage printed and the remaining balance of prepaid postage, and (2) print postage postmarks (indicia) that are accepted by the Postal Service as evidence of the prepayment of postage. Two proposed specifications have been developed on these subjects, and are entitled "Information Based Indicia Program (IBIP) PSD Specification" and "Information Based Indicia Program (IBIP) Indicia Specification." The U.S. Postal Service is seeking comments on these specifications.

The Postal Service also seeks comments on intellectual property issues raised by the specifications if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the specifications, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

DATES: Comments on the two specifications must be received on or before September 30, 1996. Comments addressing intellectual property issues must be received on or before July 15, 1996. A general meeting on this subject is being planned for mid-July in Washington, DC. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the two specifications. Interested parties may submit questions by July 1, 1996 which will be considered for incorporation into the meeting presentations.

ADDRESSES: Copies of the Indicium and Postal Security Device Specifications may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807. Mail or deliver written comments to: Manager, Retail Systems and Equipment, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807. Copies of all written comments may be inspected and

photocopied between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Goss at (202) 268–3757.

SUPPLEMENTARY INFORMATION: There are approximately 1.5 million postage meters in use in the United States which collectively account for approximately $20 billion in postal revenue annually. The manufacture and use of postage meters is governed by Postal Service regulations (see 39 CFR Part 501; Domestic Mail Manual P030). For several years USPS has been actively proposing a solution of the problem of inadequate postage meter security. To respond to the threat of fraudulent use of meters by physical tampering, USPS intends to decertify and remove from the market, in risk-driven phases, all postage meters using mechanical registers. Another problem USPS has faced is that currently available meter indicia are susceptible to counterfeiting. The Postal Service is exploring using current technology special purpose units such as computers and independent printers to provide prepaid postage.

The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. This IBIP specification is intended to address the counterfeiting threat. USPS envisions that the new indicium standard may eventually support new or existing products and services. Specific products and services have not been determined. An "IBIP indicium" substitutes for a postage stamp or a postage meter imprint as evidence of the fact that postage has been paid on mailpieces. An "IBIP Postal Secure Device" provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. The IBIP indicia is expected eventually to replace all metered postage imprints that rely on letter press printing technology. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

The Postal Security Device will provide security services to support the creation of the new "IBIP indicium." The PSD provides security-critical functions for IBIP customers. The PSD will be a hardware component for use with either a computer-based or postage meter-based host system. Each PSD will be a unique security device. The PSD core security functions are cryptographic digital signature generation and verification, and the secure management of the registers that track the remaining amount of money available for indicium creation (i.e., descending register) and the total postage value used by the PSD (i.e., ascending register). The PSD will be a tamper-resistant device that may contain an internal random number generator, various storage registers, a date/time clock, and other circuits necessary to perform these functions. The PSD will comply with Federal Information Processing Standard (FIPS) 140–1 and will be validated through the National Institute of Standards and Technology (NIST) Computer Systems Laboratory's Cryptographic Module Validation Program.

It is emphasized that this proposed standard is being published for comments and is subject to final definition. In particular, evaluation of alternative digital signing, printing standards, and symbology is continuing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites public comments on the proposed specifications.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–15778 Filed 7–1–96; 8:45 am]

BILLING CODE 7710–12–P

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss the biology and psychology of stress and will receive comment from members of the public. Dr. David A. Hamburg will chair this panel meeting.

DATES: July 23, 1996, 9:00 a.m.–4:00 p.m.

PLACE: Omni Netherland Plaza, 35 W. Fifth Street, Cincinnati, OH 45202.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this Advisory Committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The Advisory Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. Advisory Committee members have expertise relevant to the functions of the Committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, July 23, 1996

9:00 a.m. Call to order and opening remarks
9:10 a.m. Public comment
10:50 a.m. Break
11:10 a.m. Biology and psychology of stress: general overview
12:15 p.m. Lunch
1:30 p.m. Stress-related findings of the Department of Defense's Comprehensive Clinical Evaluation Program
2:00 p.m. Stress-related findings of the Department of Veterans Affairs' Persian Gulf Health Registry
2:30 p.m. Break
2:45 p.m. Risk factors and protective factors associated with differential outcomes in a cohort of Gulf War veterans
3:15 p.m. U.S. Army's Human Dimensions Research Program
3:40 p.m. Committee and staff discussion
4:00 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005–

3404, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: June 26, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–16757 Filed 7–1–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration: (The MacNeal-Schwendler Corporation, Common Stock, $.01 Par Value, Convertible Subordinated Debentures Due 2004, and Common Stock Purchase Rights) File No. 1–8722

June 26, 1996.

The MacNeal-Schwendler Corporation's ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in making the decision to withdraw its Common Stock, Debentures and Common Stock Purchase Rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock, Debentures and Common Stock Purchase Rights on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before July 18, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 96–16771 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37369; File No. SR–CHX–96–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 and Article XX, Rule 43 relating to the trading of Nasdaq National Market ("Nasdaq/NM") securities (previously known as NASDAQ/NMS securities)[1] on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, the 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 self-regulatory organization 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 self-regulatory organization 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

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[2] Among other things, these rules made the Exchange's BEST Rule (Article XX, Rule 37(a)) guarantee applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of MAX. Under the BEST Rule, agency market orders in Nasdaq/NM securities are guaranteed executions[3] in substantially the same manner as Dual Trading System Issues[4] and under the MAX rules, market orders in Nasdaq/NM securities are automatically executed in substantially the same manner as Dual Trading System Issues.

As the CHX contemplates expanding its Nasdaq/NM securities program, it is apparent that the continuing lack of an appropriate trade-through rule and appropriate intermarket linkages in the over-the-counter market make it inappropriate at this time for the Exchange to continue to require automated execution at the National Best Bid and Offer ("NBBO") for orders where the CHX specialist is not in fact quoting at the NBBO.

The purpose of the proposed rule change is to change the automatic execution feature of the Exchange's MAX System (see Article XX, Rule 37(b)) and to alter the application for the Exchange's BEST Rule (Article XX, Rule 37(a)) for Nasdaq/NM securities.

MAX Parameters

One proposed change to the MAX rules relates to the auto-execution and auto-acceptance parameters for Nasdaq/NM securities. Currently, the MAX rules

[1] The Commission notes that NASDAQ/NMS securities are now known as Nasdaq/NM securities and, therefore, requests that the Exchange submit a rule proposal that amends all appropriate Exchange Rules and Interpretations to reflect this new terminology.

[2] Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2 (the "NM Order")).

[3] Under the BEST Rule, a CHX specialist is required to guarantee the execution of certain agency market orders, up to the lesser of the size associated with the national best bid or offer or 2099 shares, at the national best bid or offer, as the case may be, even if the specialist is not quoting at that price.

[4] According to the Exchange, Dual Trading System Issues are issues that are traded on the CHX and listed on either the New York Stock Exchange or American Stock Exchange. Telephone conversation on June 5, 1996 between David T. Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

require the auto-execution parameter to be set at 1099 shares or greater and the auto-acceptance parameter to be set at 2099 shares or greater. As proposed, the auto-execution and auto-acceptance parameters for Nasdaq/NM securities will be set at 1000 shares or greater.

CHX Specialist Quoting at NBBO

When an Exchange specialist is disseminating the best bid or offer in a Nasdaq/NM security, market orders and marketable limit orders in that security will be automatically executed up to the size of the specialist's disseminated bid or offer, as the case may be, and the size of such bid or offer will automatically be decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at ⅛ point away from the NBBO for 1000 shares.

CHX Specialist Not Quoting at NBBO

In the event that the CHX specialist is not quoting a Nasdaq/NM security at the NBBO, all MAX market and marketable limited orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay unless the specialist elects to manually handled the order in accordance with the requirements set forth in proposed Rule 43 (d) of Article XX. In this regard, proposed Rule 43(d) requires a specialist to either manually execute the order at the NBBO or better during this twenty second period or to act as a agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange.[5] If the specialist decides to act as agent for the order, the rule requires the specialist to use order routing systems where appropriate. Market and marketable limit orders that are greater than the auto-execution threshold will not be subject to these requirements.

[5] The Commission notes that, while the present proposal does not specify whether the "NBBO" for the purposes of this rule is the best price at the time the order is enter or at the time it is executed, the Exchange plans to amend the proposal to clarify that market and marketable limit orders in a Nasdaq/NM security of a size equal to or less than the auto-execution threshold are to be priced at the NBBO at the time the order is entered into the MAX system, and that the order must be executed at that price or better. Telephone conversation on June 24, 1996 between David Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

The Commission further expects that these orders will be provided an opportunity for price improvement during the period between the time that the order is entered and the time it is executed which should include, at a minimum, an opportunity to receive a better price if the NBBO improves before the order is executed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or 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 reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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–96–16 and should be submitted July 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16772 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37361; File No. SR–MSRB–96–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Annual Subscription and Backlog Document Collections of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 28, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–96–4). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to change certain fees relating to the operation of its Official Statement/Advance Refunding Document ("OS/ARD") subsystem of the Municipal Securities Information Library™ ("MSIL™") system.[1] The Board is changing from $12,000 to $14,000 (plus postage or delivery charges) the annual subscription fee for magnetic tapes of images of official statements and advance refunding documents. In addition, the Board is establishing a price of $9,000 (plus delivery or postage charges) for its 1995 document collection of official statements and refunding documents, sold as a "backlog" collection.

[1] MUNICIPAL SECURITIES INFORMATION LIBRARY and MSIL are registered trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in item IV below. The Board has prepared summaries, set forth in Section 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 OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored pursuant to MSRB rule G–36 is made available electronically and in paper form to market participants and information vendors.[2] Since 1992, the annual subscription fee for daily tapes of images of current year documents from the OS/ARD system has been $12,000.[3] The Board proposes to increase the annual subscription fee to $14,000 because of the rise in the cost of operation of the system since the subscription fee was first instituted.

The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.[4] The Board is establishing a price of $9,000 (plus delivery or postage charges) for the 1995 backlog collection.

The daily tape subscription service currently has eight subscribers. The $14,000 yearly subscription fee for the daily tape of images will not cover the complete costs of operation of the OS/ARD system. In its prior filings with the Commission, the Board stated that it intends to use its general revenues to help fund collecting, indexing and storing the OS/ARD subsystem's documents. However, the Board states its intention that the costs of producing and disseminating magnetic tapes (and paper copies) would be completely covered by user fees.[5] The Board is increasing the annual subscription fee and establishing the 1995 backlog fee to defray its costs of disseminating the collection tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the annual subscription fee and the 1995 backlog fee are fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of 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

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act, because the proposal is "establishing or changing a due, fee or other charge." At any time within sixty days of 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–4 and should be submitted by July 23, 1996. For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16773 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[3] This fee was filed with the Commission. *See* Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657.

[4] Currently, several business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1994 is $7,000; 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. These fees were filed with the Commission. *See* Securities Exchange Act Release Nos. 35848 (June 14, 1995) 60 FR 32817 (1994 fee); 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

[5] *See* Securities Exchange Act Release No. 28197 (July 12, 1990) 55 FR 29436.

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice of priority areas for Commission research and amendment consideration. Request for public comment.

SUMMARY: As part of its continuing statutory responsibility to analyze sentencing issues, including the operation of the federal sentencing guidelines, the Commission preliminarily has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than August 30, 1996, to be considered by the Commission in shaping its work during the next year.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission uses this announcement to solicit formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches.

Following are the anticipated priority areas for amendment study, research, or other planned actions identified by the Commission. In some cases, a general time frame for the initiative is indicated. These time frames are subject to change as the Commission deems necessary.

The Commission welcomes comments on these priorities as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

Authority: 28 U.S.C. 994(a), (o), (p).

Richard P. Conaboy,

Chairman.

I. Implementation of New Laws Affecting Criminal Penalties

The Commission will continue to give priority to developing guideline amendments that implement legislation enacted by Congress. In this regard, Congress has recently enacted, or is expected to pass in this Session, a number of bills that may necessitate changes in the sentencing guidelines. Some of the more significant legislative initiatives are:

- The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132 (April 24, 1996). This Act contains several directives to amend the guidelines in specific ways, including a provision (section 730) granting the Commission emergency authority to amend the enhancement in USSG § 3A1.4 (International Terrorism) so that it applies broadly to any "Federal Crime of terrorism" as defined in 18 U.S.C. 2332b(g). The Act also contains numerous other provisions (e.g., increases in statutory maximum penalties, new offenses) that the Commission must analyze in order to ascertain whether guideline amendments are needed and, if so, what changes are appropriate.
- The Telecommunications Act of 1996, 104–104 (February 8, 1996). This Act contains several provisions on obscene, harassing, or wrongful use of telecommunications facilities that may necessitate guideline amendments. The Commission recently promulgated an amendment to USSG § 2G1.2 to implement a new offense created by section 508 of the Act (involving the solicitation of a minor to engage in prohibited sexual conduct). See 61 FR 20308–09 (May 6, 1996).
- The Sex Crimes Against Children Prevention Act of 1995, 104–71 (December 23, 1995). The Commission recently promulgated amendments to USSG §§ 2G2.1, 2G2.2, and 2G1.1 to implement directives of that Act. See 61 FR 20306–09, *supra*. The Commission is now considering additional conforming amendments to the child pornography guidelines in Chapter Two, Part G and possible amendments to the sexual abuse guidelines in Chapter Two, Part A, Subpart 3.
- Immigration Bill, Other Legislation. Congress is finalizing an Immigration Bill and is considering other bills affecting criminal penalties. Enactment of any such legislation may necessitate additional guideline amendments in the coming year.

II. Guideline Simplification and Modification

In 1995, the Commission announced that it was initiating a multi-year project to comprehensively assess and simplify provisions of the Guidelines Manual. See 60 F.R. 49316–17 (Sept. 22, 1995). After considering a number of staff papers and input from interested individuals and groups, the Commission anticipates focusing its attention and possible amendment consideration on the following specific issues:

- Relevant Conduct. Priority issues for the 1996–97 amendment cycle include: (1) Clarifying/streamlining the relevant conduct guideline assuming no substantive policy changes; and (2) developing options to limit the use of acquitted conduct at sentencing. Issues of lower priority that may be further explored during future amendment cycles include: (1) Substantively changing the relevant conduct guideline to limit the extent to which unconvicted conduct can affect the sentence; and (2) increasing the burden of proof at sentencing to a "clear and convincing" standard.
- Level of Detail/Guideline Complexity. Priority issues for the 1996–97 amendment cycle include: (1) Simplification of guideline/specific offense characteristics through consolidation or elimination; (2) clarification of the definition of loss; (3) examination of problematic cross references; and (4) revision of Acceptance of Responsibility adjustment.
- Departures/Offender Characteristics. Priority issues for the 1996–97 amendment cycle include: (1) Developing options for revising/clarifying the language describing the "heartland concept" in Chapter One and departure policy statements in Chapter Five in light of the recent U.S. Supreme Court decision in *Koon* v. *U.S.*, No. 94–1664, 1996 WL 315800 (U.S. June 17, 1996); and (2) focusing on family and

community ties, age, and combination of factors.

• Criminal History. Priority issues for the 1996–97 amendment cycle include: (1) Re-ordering and streamlining Chapter Four; and (2) revising assignment of criminal history points to better target serious, repeat offenders.

• Sentencing Table. Issues of lower immediate priority for discussion during future amendment cycles include: (1) Options to streamline sentencing table to reduce significantly the number of offense levels; (2) options to revise the current sentencing table's "zone" structure; and (3) additional or expanded sentencing options.

• Appellate Litigation and Other Statutory Issues. Priority issues for the 1996–97 amendment cycle include: (1) Consideration of the impact of the recent U.S. Supreme Court decision in *Koon* v. *United States*, supra, on appellate review of guideline sentences and on the need to revise the introduction to the Guidelines Manual and Departure Section (§ 5K2.0) to address the deference appellate courts should afford district courts on guideline determinations; and (2) consideration of widening the bands in monetary and drug tables to decrease litigation.

• Drug Sentencing/Role in the Offense. Priority issues for 1996–97 amendment cycle include: (1) Revising the Role in the Offense guideline to better reflect actual experience, case law development, and to provide sufficient flexibility when sentencing drug offenders.

• Introduction to Guidelines Manual. Priority issues for 1996–97 amendment cycle include: (1) Updating the introduction to reflect the evolution of the guideline sentencing process.

III. Circuit Conflicts, Miscellaneous Amendments

As part of the 1996–97 amendment cycle, the Commission expects to consider and propose for comment amendments that address some of the more important application issues involving conflicting court interpretations of guideline language.

IV. Cocaine Offenses

Under Public Law No. 104–38 (Oct. 30, 1995), the Commission is directed to submit recommendations to Congress regarding changes in the penalty statutes and sentencing guidelines for cocaine offenses (including crack). See 61 FR 80 (January 2, 1996). The Commission has been gathering and analyzing data and other relevant information, including public comment, in preparation for formulating the required recommendations. It expects to continue this process during the coming months and again invites comment regarding implementation of this congressional directive. Comment should focus on (1) the quantity ratio that should be substituted for the current 100-to-1 ratio in the relevant penalty statutes and sentencing guidelines (see USSG § 2D1.1(c)), and (2) appropriate enhancements in § 2D1.1 for violence and other harms associated with crack and powder cocaine.

V. Revisions to Money Laundering Guidelines

As directed by Public Law 104–38, *supra*, the Commission will respond to an expected Department of Justice report on money laundering charging and plea practices and will continue its study of the money laundering guidelines (U.S.S.G. §§ 2S1.1–2S1.2).

VI. Guideline Assessment, Research Initiatives

Under the direction of an outside consultant, Commission staff have initiated a number of research projects designed to assess the success of the guidelines. *See* 60 FR 49316–17 (Sept. 22, 1995). These efforts will continue in the coming year, focusing primarily on the use of an intensive study sample (ISS) of cases to better evaluate operation of the Relevant Conduct and Criminal History guidelines.

V. Administrative Initiatives

As indicated in its 1995 work priorities notice, see 60 FR 49316, 17 (Sept. 22, 1995), the Commission is engaged in an ongoing effort to maximize the efficiency of its limited staff resources. Additionally, the Commission expects to soon publish for comment a set of Rules of Practice and Procedure describing its internal operating practices and the manner in which interested persons can participate in the Commission's work.

[FR Doc. 96–16873 Filed 7–1–96; 8:45 am]
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SOCIAL SECURITY ADMINISTRATION

Social Security Ruling (SSR) 96–6p. Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–6p. This Ruling clarifies Social Security Administration policy regarding the consideration of findings of fact by State agency medical and psychological consultants and other program physicians and psychologists by adjudicators at the administrative law judge and Appeals Council levels. Also, the Ruling restores to the Rulings and clarifies policy interpretations regarding administrative law judge and Appeals Council responsibility for obtaining opinions of physicians or psychologists designated by the Commissioner of Social Security regarding equivalence to listings in the Listing of Impairments (appendix 1, subpart P of 20 CFR part 404) formerly in SSR 83–19, "Titles II and XVI: Finding Disability on the Basis of Medical Considerations Alone—The Listing of Impairments and Medical Equivalency." SSR 83–19 was rescinded without replacement by SSR 91–7c (C.E. 1990–1991, p. 92) as a result of the Supreme Court's decision in *Sullivan* v. *Zebley*, 493 U.S. 521 (1990), which invalidated the use of a medical "listings only" approach to evaluating disability claims of individuals under 18 years of age under the supplemental security income program. That decision has no bearing on the aspects of SSR 83–19 that we are restoring in this Ruling.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law

or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence

Purpose: To clarify Social Security Administration policy regarding the consideration of findings of fact by State agency medical and psychological consultants and other program physicians and psychologists by adjudicators at the administrative law judge and Appeals Council levels. Also, to restore to the Rulings and clarify policy interpretations regarding administrative law judge and Appeals Council responsibility for obtaining opinions of physicians or psychologists designated by the Commissioner regarding equivalence to listings in the Listing of Impairments (appendix 1, subpart P of 20 CFR part 404) formerly in SSR 83–19. In particular, to emphasize the following longstanding policies and policy interpretations:

1. Findings of fact made by State agency medical and psychological consultants and other program physicians and psychologists regarding the nature and severity of an individual's impairment(s) must be treated as expert opinion evidence of nonexamining sources at the administrative law judge and Appeals Council levels of administrative review.

2. Administrative law judges and the Appeals Council may not ignore these opinions and must explain the weight given to these opinions in their decisions.

3. An updated medical expert opinion must be obtained by the administrative law judge or the Appeals Council before a decision of disability based on medical equivalence can be made.

Citations (Authority): Sections 216(i), 223(d) and 1614(a) of the Social Security Act (the Act), as amended; Regulations No. 4, sections 404.1502, 404.1512(b)(6), 404.1526, 404.1527, and 404.1546; and Regulations No. 16, sections 416.902, 416.912(b)(6), 416.926, 416.927, and 416.946.

Introduction: Regulations 20 CFR 404.1527 and 416.927 set forth detailed rules for evaluating medical opinions about an individual's impairment(s) offered by medical sources [1] and the medical opinions of State agency medical and psychological consultants and other nonexamining sources. Paragraph (a) of these regulations provides that "medical opinions" are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of an individual's impairment(s), including symptoms, diagnosis and prognosis, what the individual can still do despite his or her impairment(s), and the individual's physical or mental restrictions. Paragraph (b) provides that, in deciding whether an individual is disabled, the adjudicator will always consider the medical opinions in the case record together with the rest of the relevant evidence. Paragraphs (c), (d), and (e) then provide general rules for evaluating the record, with particular attention to medical and other opinions from acceptable medical sources.

Paragraph (f) provides that findings of fact made by State agency medical and psychological consultants and other program physicians and psychologists become opinions at the administrative law judge and Appeals Council levels of administrative review and requires administrative law judges and the Appeals Council to consider and evaluate these opinions when making a decision in a particular case.

State agency medical and psychological consultants are highly qualified physicians and psychologists who are experts in the evaluation of the medical issues in disability claims under the Act. As members of the teams that make determinations of disability at the initial and reconsideration levels of the administrative review process (except in disability hearings), they consider the medical evidence in disability cases and make findings of fact on the medical issues, including, but not limited to, the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether the individual's impairment(s) meets or is equivalent in severity to the requirements for any impairment listed in 20 CFR part 404, subpart P, appendix 1 (the Listing of Impairments), and the individual's residual functional capacity (RFC).

Policy Interpretation: Because State agency medical and psychological consultants and other program physicians and psychologists are experts in the Social Security disability programs, the rules in 20 CFR 404.1527(f) and 416.927(f) require administrative law judges and the Appeals Council to consider their findings of fact about the nature and severity of an individual's impairment(s) as opinions of nonexamining physicians and psychologists. Administrative law judges and the Appeals Council are not bound by findings made by State agency or other program physicians and psychologists, but they may not ignore these opinions and must explain the weight given to the opinions in their decisions.

Paragraphs 404.1527(f) and 416.927(f) provide that the rules for considering medical and other opinions of treating sources and other sources in paragraphs (a) through (e) also apply when we consider the medical opinions of nonexamining sources, including State agency medical and psychological consultants and other program physicians and psychologists. The regulations provide progressively more rigorous tests for weighing opinions as the ties between the source of the opinion and the individual become weaker. For example, the opinions of physicians or psychologists who do not have a treatment relationship with the individual are weighed by stricter standards, based to a greater degree on medical evidence, qualifications, and explanations for the opinions, than are required of treating sources.

For this reason, the opinions of State agency medical and psychological consultants and other program physicians and psychologists can be given weight only insofar as they are supported by evidence in the case record, considering such factors as the supportability of the opinion in the evidence including any evidence received at the administrative law judge and Appeals Council levels that was not before the State agency, the consistency of the opinion with the record as a

[1] "Medical sources" are defined in 20 CFR 404.1502 and 416.902 as "treating sources," "sources of record" (i.e., medical sources that have provided an individual with medical treatment or evaluation, but do not have or did not have an ongoing treatment relationship with the individual), and "consultative examiners" for the Social Security Administration.

whole, including other medical opinions, and any explanation for the opinion provided by the State agency medical or psychological consultant or other program physician or psychologist. The adjudicator must also consider all other factors that could have a bearing on the weight to which an opinion is entitled, including any specialization of the State agency medical or psychological consultant.

In appropriate circumstances, opinions from State agency medical and psychological consultants and other program physicians and psychologists may be entitled to greater weight than the opinions of treating or examining sources. For example, the opinion of a State agency medical or psychological consultant or other program physician or psychologist may be entitled to greater weight than a treating source's medical opinion if the State agency medical or phychological consultant's opinion is based on a review of a complete case record that includes a medical report from a specialist in the individual's particular impairment which provides more detailed and comprehensive information than what was available to the individual's treating source.

The following additional guidelines apply at the administrative law judge and Appeals Council levels to opinions about equivalence to a listing in the Listing of Impairments and RFC assessments, issues that are reserved to the Commissioner in 20 CFR 404.1527(e) and 416.927(e). (See also SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.")

Medical Equivalence to an Impairment in the Listing of Impairments.

The administrative law judge or Appeals Council is responsible for deciding the ultimate legal question whether a listing is met or equaled. As trier of the facts, an administrative law judge or the Appeals Council is not bound by a finding by a State agency medical or psychological consultant or other program physician or psychologist as to whether an individual's impairment(s) is equivalent in severity to any impairment in the Listing of Impairments. However, longstanding policy requires that the judgment of a physician (or psychologist) designated by the Commissioner on the issue of equivalence on the evidence before the administrative law judge or the Appeals Council must be received into the record as expert opinion evidence and given appropriate weight.

The signature of a State agency medical or psychological consultant on an SSA–831–U5 (Disability Determination and Transmittal Form) or SSA–832–U5 or SSA–833–U5 (Cessation or Continuance of Disability or Blindness) ensures that consideration by a physician (or psychologist) designated by the Commissioner has been given to the question of medical equivalence at the initial and reconsideration levels of administrative review. Other documents, including the Psychiatric Review Technique Form and various other documents on which medical and psychological consultants may record their findings, may also ensure that this opinion has been obtained at the first two levels of administrative review.

When an administrative law judge or the Appeals Council finds that an individual's impairment(s) is not equivalent in severity to any listing, the requirement to receive expert opinion evidence into the record may be satisfied by any of the foregoing documents signed by a State agency medical or psychological consultant. However, an administrative law judge and the Appeals Council must obtain an updated medical opinion from a medical expert[2] in the following circumstances:

- When no additional medical evidence is received, but in the opinion of the administrative law judge or the Appeals Council the symptoms, signs, and laboratory findings reported in the case record suggest that a judgment of equivalence may be reasonable; or
When additional medical evidence is received that in the opinion of the administrative law judge or the Appeals Council may change the State agency medical or psychological consultant's finding that the impairment(s) is not equivalent in severity to any impairment in the Listing of Impairments.

When an updated medical judgment as to medical equivalence is required at the administrative law judge level in either of the circumstances above, the administrative law judge must call on a medical expert. When an updated medical judgment as to medical equivalence is required at the Appeals Council level in either of the circumstances above, the Appeals Council must call on the services of its medical support staff.

[2] The term "medical expert" is being used to refer to the source of expert medical opinion designated as a "medical advisor" in 20 CFR 404.1512(b)(6), 404.1527(f), 416.912(b)(6), and 416.927(f). This term is being used because it describes the role of the "medical expert" as an expert witness rather than an advisor in the course of an administrative law judge hearing.

Assessment of RFC

Although the administrative law judge and the Appeals Council are responsible for assessing an individual's RFC at their respective levels of administrative review, the administrative law judge or Appeals Council must consider and evaluate any assessment of the individual's RFC by a State agency medical or psychological consultant and by other program physicians or psychologists. At the administrative law judge and Appeals Council levels, RFC assessments by State agency medical or psychological consultants or other program physicians or psychologists are to be considered and addressed in the decision as medical opinions from nonexamining sources about what the individual can still do despite his or her impairment(s). Again, they are to be evaluated considering all of the factors set out in the regulations for considering opinion evidence.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register.**

Cross-References: SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner;" Program Operations Manual System, section DI 24515.007; and Hearings, Appeals, and Litigation Law Manual, section I–5–310.

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Social Security Ruling (SSR) 96–3p. Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment Is Severe

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–3p. This Ruling restates and clarifies the longstanding policies of the Social Security Administration for considering allegations of pain or other symptoms in determining whether individuals claiming disability benefits under Title II, Federal Old-Age, Survivors, and Disability Insurance Benefits, and Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act have a "severe" medically determinable physical or mental impairment(s).

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe

Purpose

To restate and clarify the longstanding policies of the Social Security Administration for considering allegations of pain or other symptoms in determining whether individuals claiming disability benefits under title II and title XVI of the Social Security Act (the Act) have a "severe" medically determinable physical or mental impairment(s). In particular, the purpose of this Ruling is to restate and clarify the policy that:

1. The evaluation of whether an impairment(s) is "severe" that is done at step 2 of the applicable sequential evaluation process set out in 20 CFR 404.1520, 416.920, or 416.924 requires an assessment of the functionally limiting effects of an impairment(s) on an individual's ability to do basic work activities or, for an individual under age 18 claiming disability benefits under title XVI, to do age-appropriate activities; and

2. An individual's symptoms may cause limitations and restrictions in functioning which, when considered at step 2, may require a finding that there is a "severe" impairment(s) and a decision to proceed to the next step of sequential evaluation.

Citations (Authority): Sections 216(i), 223(d), and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1508, 404.1520(a) and (c), 404.1521, 404.1523, 404.1528, and 404.1529; and Regulations No. 16, sections 416.908, 416.920(a) and (c), 416.921, 416.923, 416.924(b) and (d), 416.924d, 416.928, and 416.929.

Introduction

Note: For clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same principles regarding the evaluation of symptoms and their effects apply in determining whether the impairment(s) of an individual who is under age 18 and claiming title XVI disability benefits is severe under 20 CFR 416.924(d). For such an individual, an impairment(s) is considered "not severe" if it is a slight abnormality(ies) that causes no more than minimal limitation in the individual's ability to function independently, appropriately, and effectively in an age-appropriate manner.

To be found disabled, an individual must have a medically determinable "severe" physical or mental impairment or combination of impairments that meets the duration requirement. At step 2 of the sequential evaluation process, an impairment or combination of impairments is considered "severe" if it significantly limits an individual's physical or mental abilities to do basic work activities; an impairment(s) that is "not severe" must be a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities. (See SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe," C.E. 1981–1985, p. 394.)

Symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect an individual's ability to do basic work activities unless the individual first establishes by objective medical evidence (i.e., signs and laboratory findings) that he or she has a medically determinable physical or mental impairment(s) and that the impairment(s) could reasonably be expected to produce the alleged symptom(s). (See SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations.") The finding that an individual's impairment(s) could reasonably be expected to produce the alleged symptom(s) does not involve a determination as to the intensity, persistence, or functionally limiting effects of the symptom(s). However, once the requisite relationship between the medically determinable impairment(s) and the alleged symptom(s) is established, the intensity, persistence, and limiting effects of the symptom(s) must be considered along with the objective medical and other evidence in determining whether the impairment or combination of impairments is severe.

Policy Interpretation

In determining the severity of an impairment(s) at step 2 of the sequential evaluation process set out in 20 CFR 404.1520 and 416.920, evidence about the functionally limiting effects of an individual's impairment(s) must be evaluated in order to assess the effect of the impairment(s) on the individual's ability to do basic work activities. The vocational factors of age, education, and work experience are not considered at this step of the process. A determination that an individual's impairment(s) is not severe requires a careful evaluation of the medical findings that describe the impairment(s) (i.e., the objective medical evidence and any impairment-related symptoms), and an informed judgment about the limitations and restrictions the impairment(s) and related symptom(s) impose on the individual's physical and mental ability to do basic work activities. (See SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.")

Because a determination whether an impairment(s) is severe requires an assessment of the functionally limiting effects of an impairment(s), symptom-related limitations and restrictions must be considered at this step of the sequential evaluation process, provided that the individual has a medically

determinable impairment(s) that could reasonably be expected to produce the symptoms. If the adjudicator finds that such symptoms cause a limitation or restriction having more than a minimal effect on an individual's ability to do basic work activities, the adjudicator must find that the impairment(s) is severe and proceed to the next step in the process even if the objective medical evidence would not in itself establish that the impairment(s) is severe. In addition, if, after completing development and considering all of the evidence, the adjudicator is unable to determine clearly the effect of an impairment(s) on the individual's ability to do basic work activities, the adjudicator must continue to follow the sequential evaluation process until a determination or decision about disability can be reached.

Effective Date

This Ruling is effective on July 2, 1996.

Cross-References

SSR 85–28, "Titles II and XVI: Medical Impairments That are Not Severe," SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations," and SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements;" and Program Operations Manual System, sections DI 24505.001, DI 24505.005, DI 24515.061, DI 25215.005, DI 25225.001, DI 26515.005, DI 26515.015, and DI 26516.010.

[FR Doc. 96–16686 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

[Social Security Ruling (SSR) 96–1p]

Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422,406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–1p. This Ruling clarifies SSA's longstanding policies that (1) unless and until a Social Security Acquiescence Ruling is issued determining that a final circuit court holding conflicts with the Agency's interpretation of the Social Security Act or regulations and explaining how SSA will apply such a holding, SSA decisionmakers will continue to be bound by SSA's nationwide policy, rather than the court's holding, in adjudicating other claims within that circuit court's jurisdiction, and (2) despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise.

This Ruling does not in any way modify SSA's acquiescence policy to which the Agency continues to remain firmly committed, but instead serves to emphasize consistent adjudication in the programs SSA administers.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,
Commissioner of Social Security.

Policy Interpretation Ruling

Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions

Purpose: To clarify longstanding policy that, unless and until a Social Security Acquiescence Ruling (AR) is issued determining that a final circuit court holding conflicts with the Agency's interpretation of the Social Security Act or regulations and explaining how SSA will apply such a holding, SSA decisionmakers continue to be bound by SSA's nationwide policy, rather than the court's holding, in adjudicating other claims within that circuit court's jurisdiction. This Ruling does not in any way modify SSA's acquiescence policy to which the Agency continues to remain firmly committed, but instead serves to emphasize consistent adjudication in the programs SSA administers. This Ruling is also issued to clarify longstanding Agency policy that, despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise.

Citations (Authority): Sections 205(a), 702(a)(5) and 1631(d) of the Social Security Act; Sections 413(b), 426(a) and 508 of the Black Lung Benefits Act; Regulations No. 4, section 404.985; Regulations No. 10, section 410.670c; Regulations No. 16, section 416.1485; Regulations No. 22, section 422.406.

Background: Final regulations on the application of circuit court law in the Social Security, Supplemental Security Income, and Black Lung programs were published in the **Federal Register** on January 11, 1990 (55 FR 1012). SSA first adopted the acquiescence policy set forth in these rules in 1985, with the details evolving over the next 5 years. These rules explain how SSA acquiesces in circuit court law which conflicts with Agency policy; it does so by issuing an AR for a final circuit court decision which SSA determines is in conflict with the Agency's interpretation of the Social Security Act or regulations. 20 CFR 404.985(b), 410.670c(b) and 416.1485(b). The AR, which is issued through publication in the **Federal Register**, describes the administrative case and the court decision, identifies the issue(s), explains how the court decision differs from SSA policy, and

explains how SSA will apply the court holding, instead of its nationwide policy, when deciding claims within the applicable circuit. ARs apply at all steps in the administrative process within the applicable circuit unless the court decision, by its nature, applies only at certain steps in this process. In the latter case, the AR may be so limited.

As of the effective date of this Ruling, SSA had issued a total of 62 ARs, averaging about 3–4 ARs per year in recent years; 42 of those ARs are still in effect. The majority of the ARs issued by SSA to date have dealt with nondisability issues, although a significant portion have dealt directly with the disability determination process. Decisions for which ARs are issued often involve complex and difficult issues. The court's holding may be unclear in its scope and susceptible to differing interpretations. Despite these difficulties, no AR has been found to be inadequate by the circuit court which issued the underlying decision.

Policy Interpretation: Unless and until an AR for a circuit court holding has been issued, SSA adjudicates other claims within that circuit by applying its nationwide policy. The preamble to the final acquiescence regulations published on January 11, 1990, explained the basis for this approach in responding to a public comment suggesting that administrative law judges (ALJs) and the Appeals Council should be allowed to apply circuit court holdings without the benefit of an Acquiescence Ruling:

> [W]e have not adopted this comment. First, under this final acquiescence policy, Acquiescence Rulings apply to all levels of adjudication, not only to the ALJ and Appeals Council levels, unless a holding by its nature applies only to certain levels of adjudication. Thus, the approach suggested in this comment would create different standards of adjudication at the different levels of administrative review. Second, interpreting and applying a circuit court holding is not always a simple matter, as we noted previously.[1] Finally, by statute, establishing policy is the Secretary's[2] responsibility; adjudicators are responsible for applying that policy to the facts in any given case. Therefore, we believe that to ensure the uniform and consistent adjudication necessary in the administration of a national program, the agency must analyze court decisions and provide adjudicators as specific a statement as possible explaining the agency's interpretation of a court of appeals holding, as well as providing direction on how to apply the holding in the course of adjudication.
>
> 55 FR 1013 (1990).

As explained in SSA's regulations at 20 CFR 404.985(b), 410.670c(b), and 416.1485(b), if SSA makes an administrative determination or decision on a claim between the date of a circuit court decision and the date of issuance of an AR for that decision, the claimant, upon request, is permitted to have the claim readjudicated by demonstrating that application of the AR could change the result. Thus, as explained in the preamble to the acquiescence regulations, a readjudication procedure is provided which allows a claimant, whose application was adjudicated during the interim period between a circuit court decision and the issuance of an AR for that decision, to seek immediate application of the AR once it is issued, without the necessity of appeal. 55 FR 1013 (1990).

Finally, in accordance with its regulations, SSA acquiesces only in decisions of the Federal circuit courts, and not in decisions of Federal district courts within a circuit. Thus, despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise such as may occur in a class action.

Effective Date: This Ruling, which reflects longstanding procedures which SSA continues to believe represent the most effective and fair way to implement its acquiescence policy, is effective on July 2, 1996. This Ruling does not apply to the claims of New York disability claimants who are covered by the court-approved settlement in *Stieberger* v. *Sullivan*.

[FR Doc. 96–16684 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

[1] The preamble previously noted that, "Whether or not the holding of a particular circuit court decision 'conflicts' with our policy is not always clear . . ." 55 FR 1012 (1990).

[2] As a result of Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994, which made SSA an independent agency separate from the Department of Health and Human Services effective March 31, 1995, the responsibility for establishing policy now resides with the Commissioner of Social Security, rather than the Secretary of Health and Human Services.

Social Security Ruling (SSR) 96–5p. Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–5p. This Ruling clarifies Social Security Administration policy on how we consider medical source opinions on issues reserved to the Commissioner of Social Security, including whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the Listing of Impairments in appendix 1, subpart P of 20 CFR part 404 of the Social Security Administration regulations; what an individual's residual functional capacity is; whether an individual's residual functional capacity prevents him or her from performing past relevant work; how the vocational factors of age, education, and work experience apply; and whether an individual is "disabled" under the Social Security Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner

Purpose: To clarify Social Security Administration (SSA) policy on how we consider medical source opinions on issues reserved to the Commissioner, including whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the Listing of Impairments in appendix 1, subpart P of 20 CFR part 404 (the listings); what an individual's residual functional capacity (RFC) is; whether an individual's RFC prevents him or her from doing past relevant work; how the vocational factors of age, education, and work experience apply; and whether an individual is "disabled" under the Social Security Act (the Act). In particular, to emphasize:

1. The difference between issues reserved to the Commissioner and medical opinions.
2. That treating source opinions on issues reserved to the Commissioner are never entitled to controlling weight or special significance.
3. That opinions from any medical source about issues reserved to the Commissioner must never be ignored, and that the notice of the determination or decision must explain the consideration given to the treating source's opinion(s).
4. The difference between the opinion called a "medical source statement" and the administrative finding called a "residual functional capacity assessment."

Citations (Authority): Sections 205(a) and (b)(1), 216(i), 221(a)(1) and (g), 223(d), 1614(a), 1631(c)(1) and (d)(1), and 1633 of the Social Security Act, as amended; Regulations No. 4, sections 404.1503, 404.1504, 404.1512, 404.1513, 404.1520, 404.1526, 404.1527, and 404.1546; Regulations No. 16, sections 416.903, 416.904, 416.912, 416.913, 416.920, 416.924, 416.924d, 416.926, 416.926a, 416.927, and 416.946.

Introduction:[1] On August 1, 1991, SSA published regulations at 20 CFR 404.1527 and 416.927 that set out rules for evaluating medical opinions. The regulations provide general guidance for evaluating all evidence in a case record and provide detailed rules for evaluating medical opinion evidence. They explain the significance given to medical opinions from treating sources on the nature and severity of an individual's impairment(s). They also set out factors used to weigh opinions from all types of medical sources, including treating sources, other examining sources, and nonexamining physicians, psychologists, and other medical sources. In addition, the regulations provide that the final responsibility for deciding certain issues, such as whether an individual is disabled under the Act, is reserved to the Secretary of Health and Human Services (the Secretary).

On March 31, 1995, SSA became an independent agency under Public Law 103–296. As a result of this legislative change, the Commissioner of Social Security (the Commissioner) replaced the Secretary as the official responsible for making determinations of disability under titles II and XVI of the Act.

Policy Interpretation: The regulations at 20 CFR 404.1527(a) and 416.927(a) define medical opinions as "statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions." The regulations recognize that treating sources are important sources of medical evidence and expert testimony, and that their opinions about the nature and severity of an individual's impairment(s) are entitled to special significance; sometimes the medical opinions of treating sources are entitled to controlling weight. Paragraphs (b), (c), (d), and (f) of 20 CFR 404,1527 and 416.927 explain how we weigh treating source and other medical source opinions. (See, also, SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," and SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.")

Under 20 CFR 404.1527(e) and 416.927(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

1. Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
2. What an individual's RFC is;
3. Whether an individual's RFC prevents him or her from doing past relevant work;
4. How the vocational factors of age, education, and work experience apply; and
5. Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner.

Nevertheless, our rules provide that adjudicators must always carefully consider medical source opinions about any issue, including opinions about issues that are reserved to the Commissioner. For treating sources, the rules also require that we make every reasonable effort to recontact such sources for clarification when they provide opinions on issues reserved to the Commissioner and the bases for such opinions are not clear to us.

However, treating source opinions on issues that are reserved to the Commissioner are never entitled to controlling weight or special significance. Giving controlling weight to such opinions would, in effect, confer upon the treating source the authority to make the determination or decision about whether an individual is under a disability, and thus would be an abdication of the Commissioner's statutory responsibility to determine whether an individual is disabled.

However, opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

[1] **Note:** For clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same principles regarding medical source opinions apply in determining disability for individuals under age 18 claiming disability benefits under title XVI. Therefore, it should be understood that references in this Ruling to the ability to do gainful activity, RFC, and other terms and rules that are applicable only to title II disability claims and title XVI disability claims of individuals age 18 or older, are also intended to refer to appropriate terms and rules applicable in determining disability for individuals under age 18 under title XVI.

In evaluating the opinions of medical sources on issues reserved to the Commissioner, the adjudicator must apply the applicable factors in 20 CFR 404.1527(d) and 416.927(d). For example, it would be appropriate to consider the supportability of the opinion and its consistency with the record as a whole at the administrative law judge and Appeals Council levels in evaluating an opinion about the claimant's ability to function which is from a State agency medical or psychological consultant who has based the opinion on the entire record (see *Findings of State Agency Medical and Psychological Consultants*, below). However, pursuant to paragraph (e)(2) of 20 CFR 404.1527 and 416.927, the adjudicator is precluded from giving any special significance to the source; e.g., giving a treating source's opinion controlling weight, when weighing these opinions on issues reserved to the Commissioner.

The following discussions provide additional policy interpretations and procedures for evaluating opinions on issues reserved to the Commissioner.

Opinions About Whether an Individual's Impairment Meets the Requirements of a Listed Impairment

Whether the findings for an individual's impairment meet the requirements of an impairment in the listings is usually more a question of medical fact than a question of medical opinion. Many of the criteria in the listings relate to the nature and severity of impairments; e.g., diagnosis, prognosis and, for those listings that include such criteria, symptoms and functional limitations. In most instances, the requirements of listed impairments are objective, and whether an individual's impairment manifests these requirements is simply a matter of documentation. To the extent that a treating source is usually the best source of this documentation, the adjudicator looks to the treating source for medical evidence with which he or she can determine whether an individual's impairment meets a listing. When a treating source provides medical evidence that demonstrates that an individual has an impairment that meets a listing, and the treating source offers an opinion that is consistent with this evidence, the adjudicator's administrative finding about whether the individual's impairment(s) meets the requirements of a listing will generally agree with the treating source's opinion. Nevertheless, the issue of meeting the requirements of a listing is still an issue ultimately reserved to the Commissioner.

Opinions on Whether an Individual's Impairment(s) Is Equivalent in Severity to the Requirements of a Listed Impairment

In 20 CFR 404.1526 and 416.926, equivalence is addressed as a "decision * * * on medical evidence only" because this finding does not consider the *vocational* factors of age, education, and work experience. A finding of equivalence involves more than findings about the nature and severity of medical impairments. It also requires a judgment that the medical findings equal a level of severity set forth in 20 CFR 404.1525(a) and 416.925(a); i.e., that the impairment(s) is "* * * severe enough to prevent a person from doing any gainful activity." This finding requires familiarity with the regulations and the legal standard of severity set forth in 20 CFR 404.1525(a), 404.1526, 416.925(a), and 416.926. Therefore, it is an issue reserved to the Commissioner.[2]

Residual Functional Capacity Assessments and Medical Source Statements

The regulations describe two distinct kinds of assessments of what an individual can do despite the presence of a severe impairment(s). The first is described in 20 CFR 404.1513(b) and (c) and 416.913(b) and (c) as a "statement about what you can still do despite your impairment(s)" made by an individual's medical source and based on that source's own medical findings. This "medical source statement" is an opinion submitted by a medical source as part of a medical report. The second category of assessments is the RFC assessment described in 20 CFR 404.1545, 404.1546, 416.945, and 416.946 which is the adjudicator's ultimate finding of "what you can still do despite your limitations." Even though the adjudicator's RFC assessment may adopt the opinions in a medical source statement, they are not the same thing: A medical source statement is evidence that is submitted to SSA by an individual's medical source reflecting the source's opinion based on his or her own knowledge, while an RFC assessment is the adjudicator's ultimate finding based on a consideration of this opinion and all the other evidence in the case record about what an individual can do despite his or her impairment(s).

Medical Source Statement

Medical source statements are medical opinions submitted by acceptable medical sources[3], including treating sources and consultative examiners, about what an individual can still do despite a severe impairment(s), in particular about an individual's physical or mental abilities to perform work-related activities on a sustained basis. Adjudicators are generally required to request that acceptable medical sources provide these statements with their medical reports. Medical source statements are to be based on the medical sources' records and examination of the individual; i.e., their personal knowledge of the individual. Therefore, because there will frequently be medical and other evidence in the case record that will not be known to a particular medical source, a medical source statement may provide an incomplete picture of the individual's abilities.

Medical source statements submitted by treating sources provide medical opinions which are entitled to special significance and may be entitled to controlling weight on issues concerning the nature and severity of an individual's impairment(s). Adjudicators must remember, however, that medical source statements may actually comprise separate medical opinions regarding diverse physical and mental functions, such as walking, lifting, seeing, and remembering instructions, and that it may be necessary to decide whether to adopt or not adopt each one.

RFC Assessment

The term "residual functional capacity assessment" describes an adjudicator's finding about the ability of an individual to perform work-related activities. The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, an individual's own statement of what he or she is able or unable to do, and many other factors that could help the adjudicator determine the most reasonable findings in light of all the evidence.

[2] See the section below entitled "Findings of State Agency Medical and Psychological Consultants" for an explanation of how administrative law judges and the Appeals Council must evaluate State agency medical and psychological consultant findings about equivalence. See also SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

[3] The term "acceptable medical sources" is defined in 20 CFR 404.1513(a) and 416.913(a).

Medical Source Statement vs. RFC Assessment

A medical source's statement about what an individual can still do is medical opinion evidence that an adjudicator must consider together with all of the other relevant evidence (including other medical source statements that may be in the case record) when assessing an individual's RFC. Although an adjudicator may decide to adopt all of the opinions expressed in a medical source statement, a medical source statement must not be equated with the administrative finding known as the RFC assessment. Adjudicators must weigh medical source statements under the rules set out in 20 CFR 404.1527 and 416.927, providing appropriate explanations for accepting or rejecting such opinions.

From time-to-time, medical sources may provide opinions that an individual is limited to "sedentary work," "sedentary activity," "light work," or similar statements that appear to use the terms set out in our regulations and Rulings to describe exertional levels of maximum sustained work capability. Adjudicators must not assume that a medical source using terms such as "sedentary" and "light" is aware of our definitions of these terms. The judgment regarding the extent to which an individual is able to perform exertional ranges of work goes beyond medical judgment regarding what an individual can still do and is a finding that may be dispositive of the issue of disability.

At steps 4 and 5 of the sequential evaluation process in 20 CFR 404.1520 and 416.920, the adjudicator's assessment of an individual's RFC may be the most critical finding contributing to the final determination or decision about disability. Although the overall RFC assessment is an administrative finding on an issue reserved to the Commissioner, the adjudicator must nevertheless adopt in that assessment any treating source medical opinion (i.e., opinion on the nature and severity of the individual's impairment(s)) to which the adjudicator has given controlling weight under the rules in 20 CFR 404.1527(d)(2) and 416.927(d)(2).

Opinions on Whether an Individual Is Disabled

Medical sources often offer opinions about whether an individual who has applied for title II or title XVI disability benefits is "disabled" or "unable to work," or make similar statements of opinions. In addition, they sometimes offer opinions in other work-related terms; for example, about an individual's ability to do past relevant work or any other type of work. Because these are administrative findings that may determine whether an individual is disabled, they are reserved to the Commissioner. Such opinions on these issues must not be disregarded. However, even when offered by a treating source, they can never be entitled to controlling weight or given special significance.

Findings of State Agency Medical and Psychological Consultants

Medical and psychological consultants in the State agencies are adjudicators at the initial and reconsideration determination levels (except in disability hearings—see 20 CFR 404.914 ff. and 416.1414 ff.). As such, they do not express opinions; they make findings of fact that become part of the determination. However, 20 CFR 404.1527(f) and 416.927(f) provide that, at the administrative law judge and Appeals Council levels of the administrative review process, medical and psychological consultant findings about the nature and severity of an individual's impairment(s), including any RFC assessments, become opinion evidence. Adjudicators at these levels, including administrative law judges and the Appeals Council, must consider these opinions as expert opinion evidence of nonexamining physicians and psychologists and must address the opinions in their decisions. In addition, under 20 CFR 404.1526 and 416.926, adjudicators at the administrative law judge and Appeals Council levels must consider and address State agency medical or psychological consultant findings regarding equivalence to a listed impairment.

At the administrative law judge and Appeals Council levels, adjudicators must evaluate opinion evidence from medical or psychological consultants using all of the applicable rules in 20 CFR 404.1527 and 416.927 to determine the weight to be given to the opinion. For additional detail regarding these policies and policy interpretations, see SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

Requirements for Becontacting Treating Sources

Because treating source evidence (including opinion evidence) is important, if the evidence does not support a treating source's opinion on any issue reserved to the Commissioner and the adjudicator cannot ascertain the basis of the opinion from the case record, the adjudicator must make "every reasonable effort" to recontact the source for clarification of the reasons for the opinion.

Explanation of the Consideration Given to a Treating Source's Opinion

Treating source opinions on issues reserved to the Commissioner will never be given controlling weight. However, the notice of the determination or decision must explain the consideration given to the treating source's opinion(s).

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register.**

Cross-References: SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence," SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions;" and Program Operations Manual System, section DI 24515.010.

[FR Doc. 96–16688 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

Social Security Ruling (SSR) 96–8p. Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–8p. This Ruling states the Social Security Administration's policies and policy interpretations regarding the assessment of residual functional capacity (an individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis) in initial claims for disability benefits under title II of the Social Security Act (the Act) and supplemental security income payments based on disability under title XVI of the Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims

Purpose: To state the Social Security Administration's policies and policy interpretations regarding the assessment of residual functional capacity (RFC) in initial claims for disability benefits under titles II and XVI of the Social Security Act (the Act). In particular, to emphasize that:

1. Ordinarily, RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.

2. The RFC assessment considers only functional limitations and restrictions that result from an individual's medically determinable impairment or combination of impairments, including the impact of any related symptoms. Age and body habitus are not factors in assessing RFC. It is incorrect to find that an individual has limitations beyond those caused by his or her medically determinable impairment(s) and any related symptoms, due to such factors as age and natural body build, and the activities the individual was accustomed to doing in his or her previous work.

3. When there is no allegation of a physical or mental limitation or restriction of a specific functional capacity, and no information in the case record that there is such a limitation or restriction, the adjudicator must consider the individual to have no limitation or restriction with respect to that functional capacity.

4. The RFC assessment must first identify the individual's functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions in paragraphs (b), (c), and (d) of 20 CFR 404.1545 and 416.945. Only after that may RFC be expressed in terms of the exertional levels of work, sedentary, light, medium, heavy, and very heavy.

5. RFC is not the *least* an individual can do despite his or her limitations or restrictions, but the *most.*

6. Medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional. It is the functional limitations or restrictions caused by medical impairments and their related symptoms that are categorized as exertional or nonexertional.

Citations (Authority): Sections 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1513, 404.1520, 404.1520a, 404.1545, 404.1546, 404.1560, 404.1561, 404.1569a, and appendix 2; and Regulations No. 16, subpart I, sections 416.913, 416.920, 416.920a, 416.945, 416.946, 416.960, 416.961, and 416.969a.

Introduction: In disability determinations and decisions made at steps 4 and 5 of the sequential evaluation process in 20 CFR 404.1520 and 416.920, in which the individual's ability to do past relevant work and other work must be considered, the adjudicator must assess RFC. This Ruling clarifies the term "RFC" and discusses the elements considered in the assessment. It describes concepts for both physical and mental RFC assessments.

This Ruling applies to the assessment of RFC in claims for initial entitlement to disability benefits under titles II and XVI. Although most rules and procedures regarding RFC assessment in deciding whether an individual's disability continues are the same, there are some differences.

Policy Interpretation

General

When an individual is not engaging in substantial gainful activity and a determination or decision cannot be made on the basis of medical factors alone (i.e., when the impairment is "severe" because it has more than a minimal effect on the ability to do basic work activities yet does not meet or equal in severity the requirements of any impairment in the Listing of Impairments), the sequential evaluation process generally must continue with an identification of the individual's functional limitations and restrictions and an assessment of his or her remaining capacities for work-related activities.[1] This assessment of RFC is used at step 4 of the sequential evaluation process to determine whether an individual is able to do past relevant work, and at step 5 to determine whether an individual is able to do other work, considering his or her age, education, and work experience.

Definition of RFC. RFC is what an individual can still do despite his or her limitations. RFC is an administrative assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to do work-related physical and mental activities. (See SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations.") Ordinarily, RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's abilities on that basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[2] RFC does not represent the

[1] However, a finding of "disabled" will be made for an individual who: a) has a severe impairment(s), b) has no past relevant work, c) is age 55 or older, and d) has no more than a limited education. (See SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work" (C.E. 1981–1985, p. 447.) In such a case, it is not necessary to assess the individual's RFC to determine if he or she meets this special profile and is, therefore, disabled.

[2] The ability to work 8 hours a day for 5 days a week is not always required when evaluating an individual's ability to do past relevant work at step 4 of the sequential evaluation process. Part-time

Continued

least an individual can do despite his or her limitations or restrictions, but the most.[3] RFC is assessed by adjudicators at each level of the administrative review process based on all of the relevant evidence in the case record, including information about the individual's symptoms and any "medical source statements"—i.e., opinions about what the individual can still do despite his or her impairment(s)—submitted by an individual's treating source or other acceptable medical sources.[4]

The RFC Assessment Must be Based Solely on the Individual's Impairment(s). The Act requires that an individual's inability to work must result from the individual's physical or mental impairment(s). Therefore, in assessing RFC, the adjudicator must consider only limitations and restrictions attributable to medically determinable impairments. It is incorrect to find that an individual has limitations or restrictions beyond those caused by his or her medical impairment(s) including any related symptoms, such as pain, due to factors such as age or height, or whether the individual had ever engaged in certain activities in his or her past relevant work (e.g., lifting heavy weights.) Age and body habitus (i.e., natural body build, physique, constitution, size, and weight, insofar as they are unrelated to the individual's medically determinable impairment(s) and related symptoms) are not factors in assessing RFC in initial claims.[5]

Likewise, when there is no allegation of a physical or mental limitation or restriction of a specific functional capacity, and no information in the case record that there is such a limitation or restriction, the adjudicator must consider the individual to have no limitation or restriction with respect to that functional capacity.

RFC and Sequential Evaluation

RFC is an issue only at steps 4 and 5 of the sequential evaluation process. The following are issues regarding the RFC assessment and its use at each of these steps.

RFC and exertional levels of work. The RFC assessment is a function-by-function assessment based upon all of the relevant evidence of an individual's ability to do work-related activities. At step 4 of the sequential evaluation process, the RFC must not be expressed initially in terms of the exertional categories of "sedentary," "light," "medium," "heavy," and "very heavy" work because the first consideration at this step is whether the individual can do past relevant work as he or she actually performed it.

RFC may be expressed in terms of an exertional category, such as light, if it becomes necessary to assess whether an individual is able to do his or her past relevant work as it is generally performed in the national economy. However, without the initial function-by-function assessment of the individual's physical and mental capacities, it may not be possible to determine whether the individual is able to do past relevant work as it is generally performed in the national economy because particular occupations may not require all of the exertional and nonexertional demands necessary to do the full range of work at a given exertional level.

At step 5 of the sequential evaluation process, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required in work at that level. Therefore, it is necessary to assess the individual's capacity to perform each of these functions in order to decide which exertional level is appropriate and whether the individual is capable of doing the full range of work contemplated by the exertional level.

Initial failure to consider an individual's ability to perform the specific work-related functions could be critical to the outcome of a case. For example:

1. At step 4 of the sequential evaluation process, it is especially important to determine whether an individual who is at least "closely approaching advanced age" is able to do past relevant work because failure to address this issue at step 4 can result in an erroneous finding that the individual is disabled at step 5. It is very important to consider first whether the individual can still do past relevant work as he or she *actually* performed it because individual jobs within an occupational category as performed for particular employers may not entail all of the requirements of the exertional level indicated for that category in the Dictionary of Occupational Titles and its related volumes.

2. The opposite result may also occur at step 4 of the sequential evaluation process. When it is found that an individual cannot do past relevant work as he or she actually performed it, the adjudicator must consider whether the individual can do the work as it is generally performed in the national economy. Again, however, a failure to first make a function-by-function assessment of the individual's limitations or restrictions could result in the adjudicator overlooking some of an individual's limitations or restrictions. This could lead to an incorrect use of an exertional category to find that the individual is able to do past relevant work as it is generally performed and an erroneous finding that the individual is not disabled.

3. At step 5 of the sequential evaluation process, the same failures could result in an improper application of the rules in appendix 2 to subpart P of the Regulations No. 4 (the "Medical-Vocational Guidelines) and could make the difference between a finding of "disabled" and "not disabled." Without a careful consideration of an individual's functional capacities to support an RFC assessment based on an exertional category, the adjudicator may either overlook limitations or restrictions that would narrow the ranges and types of work an individual may be able to do, or find that the individual has limitations or restrictions that he or she does not actually have.

RFC represents the most that an individual can do despite his or her limitations or restrictions. At step 5 of the sequential evaluation process, RFC must not be expressed in terms of the lowest exertional level (e.g., "sedentary" or "light" when the individual can perform "medium" work) at which the medical-vocational rules would still direct a finding of "not disabled." This

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work that was substantial gainful activity, performed within the past 15 years, and lasted long enough for the person to learn to do it constitutes past relevant work, and an individual who retains the RFC to perform such work must be found not disabled.

[3] See SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516). SSR 83–10 states that "(T)he RFC determines a work capability that is exertionally sufficient to allow performance of at least substantially all of the activities of work at a particular level (e.g., sedentary, light, or medium), but is also insufficient to allow substantial performance of work at greater exertional levels."

[4] For a detailed discussion of the difference between the RFC assessment, which is an administrative finding of fact, and the opinion evidence called the "medical source statement" or "MSS," see SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner."

[5] The definition of disability in the Act requires that an individual's inability to work must be due to a medically determinable physical or mental impairment(s). The assessment of RFC must therefore be concerned with the impact of a disease process or injury on the individual. In determining a person's maximum RFC for sustained activity, factors of age or body habitus must not be allowed to influence the assessment.

would concede lesser functional abilities than the individual actually possesses and would not reflect the *most* he or she can do based on the evidence in the case record, as directed by the regulations.[6]

The psychiatric review technique. The psychiatric review technique described in 20 CFR 404.1520a and 416.920a and summarized on the Psychiatric Review Technique Form (PRTF) requires adjudicators to assess an individual's limitations and restrictions from a mental impairment(s) in categories identified in the "paragraph B" and "paragraph C" criteria of the adult mental disorders listings. The adjudicator must remember that the limitations identified in the "paragraph B" and "paragraph C" criteria are not an RFC assessment but are used to rate the severity of mental impairment(s) at steps 2 and 3 of the sequential evaluation process. The mental RFC assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment by itemizing various functions contained in the broad categories found in paragraphs B and C of the adult mental disorders listings in 12.00 of the Listing of Impairments, and summarized on the PRTF.

Evidence Considered

The RFC assessment must be based on *all* of the relevant evidence in the case record, such as:

- Medical history,
- Medical signs and laboratory findings,
- The effects of treatment, including limitations or restrictions imposed by the mechanics of treatment (e.g., frequency of treatment, duration, disruption to routine, side effects of medication),
- Reports of daily activities,
- Lay evidence,
- Recorded observations,
- Medical source statements,
- Effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment,
- Evidence from attempts to work,
- Need for a structured living environment, and
- Work evaluations, if available.

The adjudicator must consider all allegations of physical and mental limitations or restrictions and make every reasonable effort to ensure that the file contains sufficient evidence to assess RFC. Careful consideration must be given to any available information about symptoms because subjective descriptions may indicate more severe limitations or restrictions than can be shown by objective medical evidence alone.

In assessing RFC, the adjudicator must consider limitations and restrictions imposed by *all* of an individual's impairments, even those that are not "severe." While a "not severe" impairment(s) standing alone may not significantly limit an individual's ability to do basic work activities, it may—when considered with limitations or restrictions due to other impairments—be critical to the outcome of a claim. For example, in combination with limitations imposed by an individual's other impairments, the limitations due to such a "not severe" impairment may prevent an individual from performing past relevant work or may narrow the range of other work that the individual may still be able to do.

Exertional and Nonexertional Functions

The RFC assessment must address both the remaining exertional and nonexertional capacities of the individual.

Exertional Capacity

Exertional capacity addresses an individual's limitations and restrictions of physical strength and defines the individual's remaining abilities to perform each of seven strength demands: Sitting, standing, walking, lifting, carrying, pushing, and pulling. Each function must be considered separately (e.g., "the individual can walk for 5 out of 8 hours and stand for 6 out of 8 hours"), even if the final RFC assessment will combine activities (e.g., "walk/stand, lift/carry, push/pull"). Although the regulations describing the exertional levels of work and the Dictionary of Occupational Titles and its related volumes pair some functions, it is not invariably the case that treating the activities together will result in the same decisional outcome as treating them separately.

It is especially important that adjudicators consider the capacities separately when deciding whether an individual can do past relevant work. However, separate consideration may also influence decisionmaking at step 5 of the sequential evaluation process, for reasons already given in the section on "RFC and Sequential Evaluation."

Nonexertional Capacity

Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength; i.e., all physical limitations and restrictions that are not reflected in the seven strength demands, and mental limitations and restrictions. It assesses an individual's abilities to perform physical activities such as postural (e.g., stooping, climbing), manipulative (e.g., reaching, handling), visual (seeing), communicative (hearing, speaking), and mental (e.g., understanding and remembering instructions and responding appropriately to supervision). In addition to these activities, it also considers the ability to tolerate various environmental factors (e.g., tolerance of temperature extremes).

As with exertional capacity, nonexertional capacity must be expressed in terms of work-related functions. For example, in assessing RFC for an individual with a visual impairment, the adjudicator must consider the individual's residual capacity to perform such work-related functions as working with large or small objects, following instructions, or avoiding ordinary hazards in the workplace. In assessing RFC with impairments affecting hearing or speech, the adjudicator must explain how the individual's limitations would affect his or her ability to communicate in the workplace. Work-related mental activities generally required by competitive, remunerative work include the abilities to: understand, carry out, and remember instructions; use judgment in making work-related decisions; respond appropriately to supervision, co-workers and work situations; and deal with changes in a routine work setting.

Consider the Nature of the Activity Affected

It is the nature of an individual's limitations or restrictions that determines whether the individual will have only exertional limitations or restrictions, only nonexertional limitations or restrictions, or a combination of exertional and nonexertional limitations or restrictions. For example, symptoms, including pain, are not intrinsically exertional or nonexertional. Symptoms often affect

[6] In the Fourth Circuit, adjudicators are required to adopt a finding, absent new and material evidence, regarding the individual's RFC made in a final decision by an administrative law judge or the Appeals Council on a prior disability claim arising under the same title of the Act. In this jurisdiction, an unfavorable determination or decision using the lowest exertional level at which the rules would direct a finding of not disabled could result in an unwarranted favorable determination or decision on an individual's subsequent application; for example, if the individual's age changes to a higher age category following the final decision on the earlier application. See Acquiescence Ruling (AR) 94–2(4), *"Lively v. Secretary of Health and Human Services,* 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act." AR 94–2(4) applies to disability findings in cases involving claimants who reside in the Fourth Circuit at the time of the determination or decision on the subsequent claim.

the capacity to perform one of the seven strength demands and may or may not have effects on the demands of occupations other than the strength demands. If the only limitations or restrictions caused by symptoms, such as pain, are in one or more of the seven strength demands (e.g., lifting) the limitations or restrictions will be exertional. On the other hand, if an individual's symptoms cause a limitation or restriction that affects the individual's ability to meet the demands of occupations other than their strength demands (e.g., manipulation or concentration), the limitation or restriction will be classified as nonexertional. Symptoms may also cause both exertional and nonexertional limitations.

Likewise, even though mental impairments usually affect nonexertional functions, they may also limit exertional capacity by affecting one or more of the seven strength demands. For example, a mental impairment may cause fatigue or hysterical paralysis.

Narrative Discussion Requirements

The RFC assessment must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations). In assessing RFC, the adjudicator must discuss the individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule [7]), and describe the maximum amount of each work-related activity the individual can perform based on the evidence available in the case record. The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved.

Symptoms. In all cases in which symptoms, such as pain, are alleged, the RFC assessment must:

- Contain a thorough discussion and analysis of the objective medical and other evidence, including the individual's complaints of pain and other symptoms and the adjudicator's personal observations, if appropriate;
- Include a resolution of any inconsistencies in the evidence as a whole; and
- Set forth a logical explanation of the effects of the symptoms, including pain, on the individual's ability to work.

[7] See Footnote 2.

The RFC assessment must include a discussion of why reported symptom-related functional limitations and restrictions can or cannot reasonably be accepted as consistent with the medical and other evidence. In instances in which the adjudicator has observed the individual, he or she is not free to accept or reject that individual's complaints *solely* on the basis of such personal observations. (For further information about RFC assessment and the evaluation of symptoms, see SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.")

Medical opinions. The RFC assessment must always consider and address medical source opinions. If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted.

Medical opinions from treating sources about the nature and severity of an individual's impairment(s) are entitled to special significance and may be entitled to controlling weight. If a treating source's medical opinion on an issue of the nature and severity of an individual's impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the adjudicator must give it controlling weight. (See SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," and SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.") [8]

Effective Date: This ruling is effective on the date of its publication in the Federal Register.

Cross-References: SSR 82–52, "Titles II and XVI: Duration of the Impairment" (C.E. 1981–1985, p. 328), SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job Or the Occupation As Generally Performed" (C.E. 1981–1985, p. 427), SSR 82–62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General" (C.E. 1981–1985, p. 400), SSR 83–20, "Titles II and XVI: Onset of Disability" (C.E. 1981–1985, p. 375), SSR 85–16, "Titles II and XVI: Residual Functional Capacity for Mental Impairments" (C.E. 1981–1985, p. 390), SSR 86–8, "Titles II and XVI: The Sequential Evaluation Process" (C.E. 1986, p. 78), SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence," SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations," SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner," SSR 96–9p, "Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work," SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements;" and Program Operations Manual System, sections DI 22515.010, DI 24510.000 ff., DI 24515.002–DI 24515.007, DI 24515.061–DI 24515.062, DI 24515.064, DI 25501.000 ff., DI 25505.000 ff., and DI 28015.000 ff.

[8] A medical source opinion that an individual is "disabled" or "unable to work," has an impairment(s) that meets or is equivalent in severity to the requirements of a listing, has a particular RFC, or that concerns the application of vocational factors, is an opinion on an issue reserved to the Commissioner. Every such opinion must still be considered in adjudicating a disability claim; however, the adjudicator will not give any special significance to the opinion because of its source. See SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner." For further information about the evaluation of medical source opinions, SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

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Social Security Ruling SSR 96–9p., Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–9p. This Ruling explains the Social Security Administration's policies regarding the impact of a residual functional capacity assessment for less than a full range of sedentary work on an individual's ability to do other work.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work

Purpose: To explain the Social Security Administration's policies regarding the impact of a residual functional capacity (RFC) assessment for less than a full range of sedentary work on an individual's ability to do other work. In particular, to emphasize that:

1. An RFC for less than a full range of sedentary work reflects very serious limitations resulting from an individual's medical impairment(s) and is expected to be relatively rare.

2. However, a finding that an individual has the ability to do less than a full range of sedentary work does not necessarily equate with a decision of "disabled." If the performance of past relevant work is precluded by an RFC for less than the full range of sedentary work, consideration must still be given to whether there is other work in the national economy that the individual is able to do, considering age, education, and work experience.

Citations (Authority): Sections 223(d) and 1614(a) of the Social Security Act (the Act), as amended; Regulations No. 4, sections 404.1513(c), 404.1520, 404.1520a, 404.1545, 404.1546, 404.1560, 404.1561, 404.1562, 404.1563 through 404.1567, 404.1569, 404.1569a; appendix 1 of subpart P, section 12.00; appendix 2 of subpart P, sections 200.00 and 201.00; Regulations No. 16, sections 416.913(c), 416.920, 416.920a, 416.945, 416.946, 416.960, 416.961, 416.962, 416.963 through 416.967, 416.969 and 416.969a.

Introduction: Under the sequential evaluation process, once it has been determined that an individual is not engaging in substantial gainful activity and has a "severe" medically determinable impairment(s) which, though not meeting or equaling the criteria of any listing, prevents the individual from performing past relevant work (PRW), it must be determined whether the individual can do any other work, considering the individual's RFC, age, education, and work experience.

RFC is what an individual can still do despite his or her functional limitations and restrictions caused by his or her medically determinable physical or mental impairments. It is an administrative assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to perform work-related physical and mental activities. RFC is assessed by adjudicators at each level of the administrative review process based on all of the relevant evidence in the case record, including information about the individual's symptoms and any "medical source statements"—i.e., opinions about what the individual can still do despite a severe impairment(s)—submitted by an individual's treating source(s) or other acceptable medical source.[1]

RFC is the individual's maximum remaining ability to perform sustained work on a regular and continuing basis; i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule. It is not the least an individual can do, but the most, based on all of the information in the case record. The RFC assessment considers only those limitations and restrictions that are caused by an individual's physical or mental impairments. It does not consider limitations or restrictions due to age or body habitus, since the Act requires that an individual's inability to work must result from the individual's physical or mental impairment(s). (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Initially, the RFC assessment is a function-by-function assessment based upon all of the relevant evidence of an individual's ability to perform work-related activities. This RFC assessment is first used for a function-by-function comparison with the functional demands of an individual's PRW as he or she actually performed it and then, if necessary, as the work is generally performed in the national economy.[2]

However, at the last step of the sequential evaluation process, the RFC assessment is used to determine an individual's "maximum sustained work capability" and, where solely non-exertional impairments are not involved, must be expressed in terms of the exertional classifications of work: sedentary, light, medium, heavy, and very heavy work. The rules of appendix 2 of subpart P of Regulations No. 4 take administrative notice of the existence of numerous unskilled occupations within each of these exertional levels. The rules are then used to direct decisions about whether an individual is disabled or, when the individual is unable to perform the full range of work contemplated by an exertional level(s), as a framework for decisionmaking considering the individual's RFC, age, education, and work experience.

The impact of an RFC for less than a full range of sedentary work is especially critical for individuals who have not yet attained age 50. Since age,

[1] For a detailed discussion of the difference between the RFC assessment, which is an administrative finding of fact, and the opinion evidence called the "medical source statement" or "MSS," see SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner."

[2] RFC may be expressed in terms of an exertional category, such as "light," if it becomes necessary to assess whether an individual is able to perform past relevant work as it is generally performed in the national economy. However, without the initial function-by-function accounting of the individual's capacities, it may not be possible to determine whether the individual is able to perform past relevant work as it is generally performed in the national economy because particular occupations may not require all of the exertional and nonexertional demands necessary to perform the full range of work at a given exertional level. See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims."

education, and work experience are not usually significant factors in limiting the ability of individuals under age 50 to make an adjustment to other work,[3] the conclusion whether such individuals who are limited to less than the full range of sedentary work are disabled will depend primarily on the nature and extent of their functional limitations or restrictions. On the other hand, since the rules in Table No. 1 of appendix 2, "Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)," direct a decision of "disabled" for individuals age 50 and over who are limited to a full range of sedentary work, unless the individual has transferable skills or education that provides for direct entry into skilled sedentary work, the impact of an RFC for less than the full range of sedentary work in such individuals is less critical.

Policy Interpretation: Under the regulations, "sedentary work" represents a significantly restricted range of work. Individuals who are limited to no more than sedentary work by their medical impairments have very serious functional limitations. For the majority of individuals who are age 50 or older and who are limited to the full range of sedentary work by their medical impairments, the rules and guidelines in appendix 2 require a conclusion of "disabled."

Nevertheless, the rules in Table No. 1 in appendix 2 take administrative notice that there are approximately 200 separate unskilled sedentary occupations, each representing numerous jobs, in the national economy.[4] Therefore, even though "sedentary work" represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity in all individuals.

Moreover, since each occupation administratively noticed by Table No. 1 represents numerous jobs, the ability to do even a *limited* range of sedentary work does not in itself establish disability in all individuals, although a finding of "disabled" usually applies when the full range of sedentary work is significantly eroded (see *Using the Rules in Table No. 1 as a Framework: "Erosion" of the Occupational Base* below). In deciding whether an individual who is limited to a partial range of sedentary work is able to make an adjustment to work other than any PRW, the adjudicator is required to make an individualized determination, considering age, education, and work experience, including any skills the individual may have that are transferable to other work, or education that provides for direct entry into skilled work, under the rules and guidelines in the regulations.

Sedentary Work

The ability to perform the full range of sedentary work requires the ability to lift no more than 10 pounds at a time and occasionally to lift or carry articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. "Occasionally" means occurring from very little up to one-third of the time, and would generally total no more than about 2 hours of an 8-hour workday. Sitting would generally total about 6 hours of an 8-hour workday. Unskilled sedentary work also involves other activities, classified as "nonexertional," such as capacities for seeing, manipulation, and understanding, remembering, and carrying out simple instructions.

The Occupational Base for Sedentary Work

The term "occupational base" means the approximate number of occupations that an individual has the RFC to perform considering all exertional and nonexertional limitations and restrictions. (See SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical-Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516).) A full range of sedentary work includes all or substantially all of the approximately 200[5] unskilled sedentary occupations administratively noticed in Table No. 1.

Thus, the RFC addressed by a particular rule in Table No. 1 establishes an occupational base that at a minimum includes the full range of unskilled sedentary occupations administratively noticed. The base may be broadened by the addition of specific skilled or semiskilled occupations that an individual with an RFC limited to sedentary work can perform by reason of his or her education or work experience. However, if the individual has no transferable skills or no education or training that provides for direct entry into skilled work, the occupational base represented by the rules in Table No. 1 comprises only the sedentary unskilled occupations in the national economy that such an individual can perform.

The rules in Table No. 1 direct conclusions as to disability where the findings of fact coincide with all of the criteria of a particular rule; i.e., RFC (a maximum sustained work capability for sedentary work) and the vocational factors of age, education, and work experience. In order for a rule in Table No. 1 to direct a conclusion of "not disabled," the individual must be able to perform the full range of work administratively noticed by a rule. This means that the individual must be able to perform substantially all of the strength demands defining the sedentary level of exertion, as well as the physical and mental nonexertional demands that are also required for the performance of substantially all of the unskilled work considered at the sedentary level. Therefore, in order for a rule to direct a conclusion of "not disabled," an individual must also have no impairment that restricts the nonexertional capabilities to a level below those needed to perform unskilled work, in this case, at the sedentary level.

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[3] However, "younger individuals" age 45–49 who are unable to communicate in English or who are illiterate in English and who are limited to even a *full* range of sedentary work must be found disabled under rule 201.17 in Table No. 1.

[4] An "occupation" refers to a grouping of numerous individual "jobs" with similar duties. Within occupations (e.g., "carpenter") there may be variations among jobs performed for different employers (e.g., "rough carpenter").

[5] The regulations specify that this is an approximation. The revised fourth edition of the Dictionary of Occupational Titles and its companion volumes (the DOT, 1991) lists 137 separate occupations. However, the introduction to Volume I explains that the fourth edition of the DOT (1977) "substantially modified or combined with related definitions" several thousand definitions from the third edition. In 1992, we published a notice in the **Federal Register** explaining that an analysis of the revised fourth edition of the DOT and available data for the then upcoming volume of the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCO) showed "that the range of work of which the medical-vocational rules take administrative notice continues to represent more occupations than would be required to represent significant numbers," and that "we have received no significant data or other evidence to indicate that * * * the unskilled occupational base * * * has changed substantially." (See 57 FR 43005, September 17, 1992.) In February 1996, contact with the North Carolina Occupational Analysis Field Center, the organization that compiles the data the Department of Labor uses in the SCO, confirmed that there are no precise updated data but that the regulatory estimate of approximately 200 sedentary unskilled occupations is still valid, because some of the 137 occupations in the current edition of the DOT comprise more than one of the separate occupations of which we take administrative notice.

Using the Rules in Table No. 1 as a Framework: "Erosion" of the Occupational Base

Where any one of the findings of fact does not coincide with the corresponding criterion of a rule in Table No. 1 (except in those cases where the concept of borderline age applies[6]), the rule does not direct a decision. In cases such as the following, the medical-vocational rules must be used as a framework for considering the extent of any erosion of the sedentary occupational base:

- Any one of an individual's exertional capacities is determined to be less than that required to perform a full range of sedentary work; or
- Based on an individual's exertional capacities, a rule in Table No. 1 would direct a decision of "not disabled," but the individual also has a nonexertional limitation(s) that narrows the potential range of sedentary work to which he or she might be able to adjust (i.e., the individual has the exertional capacity to do the full range of sedentary work, but the sedentary occupational base is reduced because of at least one nonexertional limitation).

When there is a reduction in an individual's exertional or nonexertional capacity so that he or she is unable to perform substantially all of the occupations administratively noticed in Table No. 1, the individual will be unable to perform the full range of sedentary work: the occupational base will be "eroded" by the additional limitations or restrictions. However, the mere inability to perform substantially all sedentary unskilled occupations does not equate with a finding of disability. There may be a number of occupations from the approximately 200 occupations administratively noticed, and jobs that exist in significant numbers, that an individual may still be able to perform even with a sedentary occupational base that has been eroded.

Whether the individual will be able to make an adjustment to other work requires adjudicative judgment regarding factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base; i.e., the impact of the limitations or restrictions on the number of sedentary unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education, and work experience, including any transferable skills or education providing for direct entry into skilled work. Where there is more than a slight impact on the individual's ability to perform the full range of sedentary work, if the adjudicator finds that the individual is able to do other work, the adjudicator must cite examples of occupations or jobs the individual can do and provide a statement of the incidence of such work in the region where the individual resides or in several regions of the country.

Exertional and Nonexertional Limitations and Restrictions

Exertional capacity addresses an individual's limitations and restrictions of physical strength and defines the individual's remaining ability to perform each of seven strength demands: Sitting, standing, walking, lifting, carrying, pushing, and pulling. An exertional limitation is an *impairment-caused* limitation of any one of these activities.

Nonexertional capacity considers any work-related limitations and restrictions that are not exertional. Therefore, a nonexertional limitation is an *impairment-caused* limitation affecting such capacities as mental abilities, vision, hearing, speech, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, and feeling. Environmental restrictions are also considered to be nonexertional.

Thus, it is the *nature of an individual's limitations and restrictions,* not certain impairments or symptoms, that determines whether the individual will be found to have only exertional limitations or restrictions, only nonexertional limitations or restrictions, or a combination of exertional and nonexertional limitations or restrictions. For example, even though mental impairments often affect nonexertional functions, they may also limit exertional capacity affecting one of the seven strength demands; e.g., from fatigue or hysterical paralysis. Likewise, symptoms, including pain, are not intrinsically exertional or nonexertional; when a symptom causes a limitation in one of the seven strength demands, the limitation must be considered exertional. (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Guidelines for Evaluating the Ability To Do Less Than a Full Range of Sedentary Work

The following sections provide adjudicative guidance as to the impact of various RFC limitations and restrictions on the unskilled sedentary occupational base. The RFC assessment must include a narrative that shows the presence and degree of any specific limitations and restrictions, as well as an explanation of how the evidence in file was considered in the assessment. The individual's maximum remaining capacities to perform sustained work on a regular and continuing basis (what he or she can still do 8 hours a day, for 5 days a week, or an equivalent work schedule) must be stated.

An accurate accounting of an individual's abilities, limitations, and restrictions is necessary to determine the extent of erosion of the occupational base, the types of sedentary occupations an individual might still be able to do, and whether it will be necessary to make use of a vocational resource. The RFC assessment must be sufficiently complete to allow an adjudicator to make an informed judgment regarding these issues.

Exertional Limitations and Restrictions

Lifting/carrying and pushing/pulling: If an individual is unable to lift 10 pounds or occasionally lift and carry items like docket files, ledgers, and small tools throughout the workday, the unskilled sedentary occupational base will be eroded. The extent of erosion will depend on the extent of the limitations. For example, if it can be determined that the individual has an ability to lift or carry slightly less than 10 pounds, with no other limitations or restrictions in the ability to perform the requirements of sedentary work, the unskilled sedentary occupational base would not be significantly eroded; however, an inability to lift or carry more than 1 or 2 pounds would erode the unskilled sedentary occupational base significantly. For individuals with limitations in lifting or carrying weights between these amounts, consultation with a vocational resource may be appropriate.

Limitations or restrictions on the ability to push or pull will generally have little effect on the unskilled sedentary occupational base.

Standing and walking: The full range of sedentary work requires that an individual be able to stand and walk for a total of approximately 2 hours during an 8-hour workday. If an individual can stand and walk for a total of slightly less than 2 hours per 8-hour workday, this, by itself, would not cause the occupational base to be significantly eroded. Conversely, a limitation to standing and walking for a total of only a few minutes during the workday would erode the unskilled sedentary occupational base significantly. For individuals able to stand and walk in between the slightly less than 2 hours and only a few minutes, it may be

[6] See 20 CFR 404.1563(a) and 416.963(a) and SSR 83–10.

appropriate to consult a vocational resource.

Sitting: In order to perform a full range of sedentary work, an individual must be able to remain in a seated position for approximately 6 hours of an 8-hour workday, with a morning break, a lunch period, and an afternoon break at approximately 2-hour intervals. If an individual is unable to sit for a total of 6 hours in an 8-hour work day, the unskilled sedentary occupational base will be eroded. The extent of the limitation should be considered in determining whether the individual has the ability to make an adjustment to other work. *See Alternate sitting and standing* below.

The fact that an individual cannot do the sitting required to perform the full range of sedentary work does not necessarily mean that he or she cannot perform other work at a higher exertional level. In unusual cases, some individuals will be able to stand and walk longer than they are able to sit. If an individual is able to stand and walk for approximately 6 hours in an 8-hour workday (and meets the other requirements for light work), there may be a significant number of light jobs in the national economy that he or she can do even if there are not a significant number of sedentary jobs.

Alternate sitting and standing: An individual may need to alternate the required sitting of sedentary work by standing (and, possibly, walking) periodically. Where this need cannot be accommodated by scheduled breaks and a lunch period, the occupational base for a full range of unskilled sedentary work will be eroded. The extent of the erosion will depend on the facts in the case record, such as the frequency of the need to alternate sitting and standing and the length of time needed to stand. The RFC assessment *must* be specific as to the frequency of the individual's need to alternate sitting and standing. It may be especially useful in these situations to consult a vocational resource in order to determine whether the individual is able to make an adjustment to other work.

Medically required hand-held assistive device: To find that a hand-held assistive device is medically required, there must be medical documentation establishing the need for a hand-held assistive device to aid in walking or standing, and describing the circumstances for which it is needed (i.e., whether all the time, periodically, or only in certain situations; distance and terrain; and any other relevant information). The adjudicator must always consider the particular facts of a case. For example, if a medically required hand-held assistive device is needed only for prolonged ambulation, walking on uneven terrain, or ascending or descending slopes, the unskilled sedentary occupational base will not ordinarily be significantly eroded.

Since most unskilled sedentary work requires only occasional lifting and carrying of light objects such as ledgers and files and a maximum lifting capacity for only 10 pounds, an individual who uses a medically required hand-held assistive device in one hand may still have the ability to perform the minimal lifting and carrying requirements of many sedentary unskilled occupations with the other hand.[7] For example, an individual who must use a hand-held assistive device to aid in walking or standing because of an impairment that affects one lower extremity (e.g., an unstable knee), or to reduce pain when walking, who is limited to sedentary work because of the impairment affecting the lower extremity, and who has no other functional limitations or restrictions may still have the ability to make an adjustment to sedentary work that exists in significant numbers. On the other hand, the occupational base for an individual who must use such a device for balance because of significant involvement of both lower extremities (e.g., because of a neurological impairment) may be significantly eroded.

In these situations, too, it may be especially useful to consult a vocational resource in order to make a judgment regarding the individual's ability to make an adjustment to other work.

Nonexertional Limitations and Restrictions

Postural limitations: Postural limitations or restrictions related to such activities as climbing ladders, ropes, or scaffolds, balancing, kneeling, crouching, or crawling would not usually erode the occupational base for a full range of unskilled sedentary work significantly because those activities are not usually required in sedentary work. In the SCO, "balancing" means maintaining body equilibrium to prevent falling when walking, standing, crouching, or running on narrow, slippery, or erratically moving surfaces. If an individual is limited in balancing only on narrow, slippery, or erratically moving surfaces, this would not, by itself, result in a significant erosion of the unskilled sedentary occupational base. However, if an individual is limited in balancing even when standing or walking on level terrain, there may be a significant erosion of the unskilled sedentary occupational base. It is important to state in the RFC assessment what is meant by limited balancing in order to determine the remaining occupational base. Consultation with a vocational resource may be appropriate in some cases.

An ability to stoop occasionally; i.e., from very little up to one-third of the time, is required in most unskilled sedentary occupations. A *complete* inability to stoop would significantly erode the unskilled sedentary occupational base and a finding that the individual is disabled would usually apply, but restriction to occasional stooping should, by itself, only minimally erode the unskilled occupational base of sedentary work. Consultation with a vocational resource may be particularly useful for cases where the individual is limited to less than occasional stooping.

Manipulative limitations: Most unskilled sedentary jobs require good use of both hands and the fingers; i.e., bilateral manual dexterity. Fine movements of small objects require use of the fingers; e.g., to pick or pinch. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions.

Any *significant* manipulative limitation of an individual's ability to handle and work with small objects with both hands will result in a significant erosion of the unskilled sedentary occupational base. For example, example 1 in section 201.00(h) of appendix 2, describes an individual who has an impairment that prevents the performance of *any* sedentary occupations that require bilateral manual dexterity (i.e., "limits the individual to sedentary jobs which do not require bilateral manual dexterity"). When the limitation is less significant, especially if the limitation is in the non-dominant hand, it may be useful to consult a vocational resource.

The ability to feel the size, shape, temperature, or texture of an object by the fingertips is a function required in very few jobs and impairment of this ability would not, by itself, significantly erode the unskilled sedentary occupational base.

Visual limitations or restrictions: Most sedentary unskilled occupations require working with small objects. If a visual limitation prevents an individual from seeing the small objects involved in most sedentary unskilled work, or if an individual is not able to avoid ordinary hazards in the workplace, such as boxes

[7] Bilateral manual dexterity is needed when sitting but is not generally necessary when performing the standing and walking requirements of sedentary work.

on the floor, doors ajar, or approaching people or vehicles, there will be a significant erosion of the sedentary occupational base. These cases may require the use of vocational resources.

Communicative limitations: Basic communication is all that is needed to do unskilled work. The ability to hear and understand simple oral instructions or to communicate simple information is sufficient. If the individual retains these basic communication abilities, the unskilled sedentary occupational base would not be significantly eroded in these areas.

Environmental restrictions: An "environmental restriction" is an impairment-caused need to avoid an environmental condition in a workplace. Definitions for various workplace environmental conditions are found in the SCO; e.g., "extreme cold" is exposure to nonweather-related cold temperatures.

In general, few occupations in the unskilled sedentary occupational base require work in environments with extreme cold, extreme heat, wetness, humidity, vibration, or unusual hazards. The "hazards" defined in the SCO are considered unusual in unskilled sedentary work. They include: moving mechanical parts of equipment, tools, or machinery; electrical shock; working in high, exposed places; exposure to radiation; working with explosives; and exposure to toxic, caustic chemicals. Even a need to avoid all exposure to these conditions would not, by itself, result in a significant erosion of the occupational base.

Since all work environments entail some level of noise, restrictions on the ability to work in a noisy workplace must be evaluated on an individual basis. The unskilled sedentary occupational base may or may not be significantly eroded depending on the facts in the case record. In such cases, it may be especially useful to consult a vocational resource.

Restrictions to avoid exposure to odors or dust must also be evaluated on an individual basis. The RFC assessment must specify which environments are restricted and state the extent of the restriction; e.g., whether only excessive or even small amounts of dust must be avoided.

Mental limitations or restrictions: A substantial loss of ability to meet any one of several basic work-related activities on a sustained basis (i.e., 8 hours a day, 5 days a week, or an equivalent work schedule), will substantially erode the unskilled sedentary occupational base and would justify a finding of disability. These mental activities are generally required by competitive, remunerative, unskilled work:

- Understanding, remembering, and carrying out simple instructions.
- Making judgments that are commensurate with the functions of unskilled work—i.e., simple work-related decisions.
- Responding appropriately to supervision, co-workers and usual work situations.
- Dealing with changes in a routine work setting.

A less than substantial loss of ability to perform any of the above basic work activities may or may not significantly erode the unskilled sedentary occupational base. The individual's remaining capacities must be assessed and a judgment made as to their effects on the unskilled occupational base considering the other vocational factors of age, education, and work experience. When an individual has been found to have a limited ability in one or more of these basic work activities, it may be useful to consult a vocational resource.

Use of Vocational Resources

When the extent of erosion of the unskilled sedentary occupational base is not clear, the adjudicator may consult various authoritative written resources, such as the DOT, the SCO, the Occupational Outlook Handbook, or County Business Patterns.

In more complex cases, the adjudicator may use the resources of a vocational specialist or vocational expert.[8] The vocational resource may be asked to provide any or all of the following: An analysis of the impact of the RFC upon the full range of sedentary work, which the adjudicator may consider in determining the extent of the erosion of the occupational base, examples of occupations the individual may be able to perform, and citations of the existence and number of jobs in such occupations in the national economy.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 86–8, "Titles II and XVI: The Sequential Evaluation Process" (C.E. 1986, p. 78), SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical-Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516), SSR 83–12, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work" (C.E. 1981–1985, p. 529), SSR 83–14, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments" (C.E. 1981–1985, p. 535), SSR 85–15, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments" (C.E. 1981–1985, p. 543), SSR–96 8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" Program Operations Manual System, sections DI 24510.001, DI 24510.005, DI 24510.010, DI 24510.050, DI 24515.061, DI 25001.001, DI 25010.001, DI 25020.005, DI 25020.010, DI 25020.015, DI 25025.001 and DI 28005.015; and Hearings, Appeals, and Litigation Law Manual, sections I–2–548 and I–2–550.

[8] At the hearings and appeals levels, vocational experts (VEs) are vocational professionals who provide impartial expert opinion during the hearings and appeals process either by testifying or by providing written responses to interrogatories. A VE may be used before, during, or after a hearing. Whenever a VE is used, the individual has the right to review and respond to the VE evidence prior to the issuance of a decision. The VE's opinion is not binding on an adjudicator, but must be weighed along with all other evidence.

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[Social Security Ruling (SSR) 96–7p]

Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–7p. This Ruling clarifies when the evaluation of symptoms, including pain, under 20 CFR 404.1529 and 416.929 requires a finding about the credibility of an individual's statements about pain or other symptom(s) and its functional effects; explains the factors to be considered in assessing the credibility of the individual's statements about symptoms; and states the importance of explaining the reasons for the finding about the credibility of the individual's statements in the disability determination or decision. This Ruling also incorporates and elaborates upon the policy interpretation and procedures in SSR 95–5p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached" (published in the

Federal Register on October 31, 1995, at 60 FR 55406). Consequently, this Ruling supersedes SSR 95–5p.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements

This Ruling supersedes Social Security Ruling (SSR) 95–5p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached."

Purpose: The purpose of this Ruling is to clarify when the evaluation of symptoms, including pain, under 20 CFR 404.1529 and 416.929 requires a finding about the credibility of an individual's statements about pain or other symptom(s) and its functional effects; to explain the factors to be considered in assessing the credibility of the individual's statements about symptoms; and to state the importance of explaining the reasons for the finding about the credibility of the individual's statements in the disability determination or decision.[1] In particular, this Ruling emphasizes that:

1. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms.

2. When the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms has been established, the intensity, persistence, and functionally limiting effects of the symptoms must be evaluated to determine the extent to which the symptoms affect the individual's ability to do basic work activities. This requires the adjudicator to make a finding about the credibility of the individual's statements about the symptom(s) and its functional effects.

3. Because symptoms, such as pain, sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the adjudicator must carefully consider the individual's statements about symptoms with the rest of the relevant evidence in the case record in reaching a conclusion about the credibility of the individual's statements if a disability determination or decision that is fully favorable to the individual cannot be made solely on the basis of objective medical evidence.

4. In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. An individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence.

5. It is not sufficient for the adjudicator to make a single, conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight.

Citations (Authority): Sections 216(i), 223(d), and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1528(a), 404.1529, and 404.1569a; and Regulations No. 16, sections 416.928(a), 416.929, and 416.969a.

Introduction: A symptom is an individual's own description of his or her physical or mental impairment(s).[2] Under the regulations, an individual's statement(s) about his or her symptoms is not enough in itself to establish the existence of a physical or mental impairment or that the individual is disabled.

The regulations describe a two-step process for evaluating symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness:

- First, the adjudicator must consider whether there is an underlying medically determinable physical or mental impairment(s)—i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques—that could reasonably be expected to produce the individual's pain or other symptoms.[3] The finding that an

[1] For clarity, the discussions in this Ruling refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same basic principles with regard to determining whether statements about symptoms are credible also apply to claims of individuals under age 18 claiming disability benefits under title XVI.

[2] For an individual under age 18 claiming disability benefits under title XVI who is unable to adequately describe his or her symptom(s), the adjudicator will accept as a statement of this symptom(s) the description given by the person most familiar with the individual, such as a parent, other relative, or guardian. 20 CFR 416.928(a).

[3] The adjudicator must develop evidence regarding the possibility of a medically determinable mental impairment when the record contains information to suggest that such an impairment exists, and the individual alleges pain or other symptoms, but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

individual's impairment(s) could reasonably be expected to produce the individual's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the individual's symptoms. If there is no medically determinable physical or mental impairment(s), or if there is a medically determinable physical or mental impairment(s) but the impairment(s) could not reasonably be expected to produce the individual's pain or other symptoms, the symptoms cannot be found to affect the individual's ability to do basic work activities.

- Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the individual's pain or other symptoms has been shown, the adjudicator must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities. For this purpose, whenever the individual's statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the adjudicator must make a finding on the credibility of the individual's statements based on a consideration of the entire case record. This includes the medical signs and laboratory findings, the individual's own statements about the symptoms, any statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. This requirement for a finding on the credibility of the individual's statements about symptoms and their effects is reflected in 20 CFR 404.1529(c)(4) and 416.929(c)(4). These provisions of the regulations provide that an individual's symptoms, including pain, will be determined to diminish the individual's capacity for basic work activities to the extent that the individual's alleged functional limitations and restrictions due to symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence in the case record.

When additional information is needed to assess the credibility of the individual's statements about symptoms and their effects, the adjudicator must make every reasonable effort to obtain available information that could shed light on the credibility of the individual's statements. In recognition of the fact that an individual's symptoms can sometimes suggest a greater level of severity of impairment than can be shown by the objective medical evidence alone, 20 CFR 404.1529(c) and 416.929(c) describe the kinds of evidence, including the factors below, that the adjudicator must consider in addition to the objective medical evidence when assessing the credibility of an individual's statements:

1. The individual's daily activities;
2. The location, duration, frequency, and intensity of the individual's pain or other symptoms;
3. Factors that precipitate and aggravate the symptoms;
4. The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;
5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;
6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and
7. Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

Once the adjudicator has determined the extent to which the individual's symptoms limit the individual's ability to do basic work activities by making a finding on the credibility of the individual's statements, the impact of the symptoms on the individual's ability to function must be considered along with the objective medical and other evidence, first in determining whether the individual's impairment or combination of impairments is "severe" at step 2 of the sequential evaluation process for determining disability and, as necessary, at each subsequent step of the process.[4] (See SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," and SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Policy Interpretation: A symptom is an individual's own description of his or her physical or mental impairment(s). Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce pain or other symptoms has been established, adjudicators must recognize that individuals may experience their symptoms differently and may be limited by their symptoms to a greater or lesser extent than other individuals with the same medical impairments and the same medical signs and laboratory findings. Because symptoms, such as pain, sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, any statements of the individual concerning his or her symptoms must be carefully considered if a fully favorable determination or decision cannot be made solely on the basis of objective medical evidence.

If an individual's statements about pain or other symptoms are not substantiated by the objective medical evidence, the adjudicator must consider all of the evidence in the case record, including any statements by the individual and other persons concerning the individual's symptoms. The adjudicator must then make a finding on the credibility of the individual's statements about symptoms and their functional effects.

Credibility

In general, the extent to which an individual's statements about symptoms can be relied upon as probative evidence in determining whether the individual is disabled depends on the credibility of the statements. In basic terms, the credibility of an individual's statements about pain or other symptoms and their functional effects is the degree to which the statements can be believed and accepted as true. When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individual's statements.

The finding on the credibility of the individual's statements cannot be based on an intangible or intuitive notion about an individual's credibility. The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or

[4] In determining whether the impairment(s) of an individual claiming disability benefits under title II or an individual age 18 or older claiming disability benefits under title XVI is medically equivalent to a listed impairment in appendix 1 of subpart P of 20 CFR Part 404, the adjudicator will not substitute allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the individual's impairment(s) to that of a listed impairment. 20 CFR 404.1529(d)(3) and 416.929(d)(3). In determining whether the impairment(s) of an individual under age 18 claiming disability benefits under title XVI is equivalent to a listed impairment, if the adjudicator cannot find equivalence based on medical evidence only, the adjudicator will consider pain or another symptom(s) under 20 CFR 416.926a(b)(3) in determining whether the individual has an impairment(s) that results in overall functional limitations that are the same as the disabling functional consequences of a listed impairment. 20 CFR 416.929(d)(3).

decision. It is not sufficient to make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight. This documentation is necessary in order to give the individual a full and fair review of his or her claim, and in order to ensure a well-reasoned determination or decision.

In making a finding about the credibility of an individual's statements, the adjudicator need not totally accept or totally reject the individual's statements. Based on a consideration of all of the evidence in the case record, the adjudicator may find all, only some, or none of an individual's allegations to be credible. The adjudicator may also find an individual's statements, such as statements about the extent of functional limitations or restrictions due to pain or other symptoms, to be credible to a certain degree. For example, an adjudicator may find credible an individual's statement that the abilities to lift and carry are affected by symptoms, but find only partially credible the individual's statements as to the extent of the functional limitations or restrictions due to symptoms; i.e., that the individual's abilities to lift and carry are compromised, but not to the degree alleged. Conversely, an adjudicator may find credible an individual's statement that symptoms limit his or her ability to concentrate, but find that the limitation is greater than that stated by the individual.

Moreover, a finding that an individual's statements are not credible, or not wholly credible, is not in itself sufficient to establish that the individual is not disabled. All of the evidence in the case record, including the individual's statements, must be considered before a conclusion can be made about disability.

Factors in Evaluating Credibility

Assessment of the credibility of an individual's statements about pain or other symptoms and about the effect the symptoms have on his or her ability to function must be based on a consideration of all of the evidence in the case record. This includes, but is not limited to:

- The medical signs and laboratory findings;
- Diagnosis, prognosis, and other medical opinions provided by treating or examining physicians or psychologists and other medical sources; and
- Statements and reports from the individual and from treating or examining physicians or psychologists and other persons about the individual's medical history, treatment and response, prior work record and efforts to work, daily activities, and other information concerning the individual's symptoms and how the symptoms affect the individual's ability to work.

The adjudicator must also consider any observations about the individual recorded by Social Security Administration (SSA) employees during interviews, whether in person or by telephone. In instances where the individual attends an administrative proceeding conducted by the adjudicator, the adjudicator may also consider his or her own recorded observations of the individual as part of the overall evaluation of the credibility of the individual's statements.

Consideration of the individual's statements and the statements and reports of medical sources and other persons with regard to the seven factors listed in the regulations,[5] along with any other relevant information in the case record, including the information described above, will provide the adjudicator with an overview of the individual's subjective complaints. The adjudicator must then evaluate all of this information and draw appropriate inferences and conclusions about the credibility of the individual's statements.

The following sections provide additional guidelines for the adjudicator to consider when evaluating the credibility of an individual's statements.

Consistency

One strong indication of the credibility of an individual's statements is their consistency, both internally and with other information in the case record. The adjudicator must consider such factors as:

- The degree to which the individual's statements are consistent with the medical signs and laboratory findings and other information provided by medical sources, including information about medical history and treatment.
- The consistency of the individual's own statements. The adjudicator must compare statements made by the individual in connection with his or her claim for disability benefits with statements he or she made under other circumstances, when such information is in the case record. Especially important are statements made to treating or examining medical sources and to the "other sources" defined in 20 CFR 404.1513(e) and 416.913(e). The adjudicator must also look at statements the individual made to SSA at each prior step of the administrative review process and in connection with any concurrent claim or, when available, prior claims for disability benefits under titles II and XVI. Likewise, the case record may contain statements the individual made in connection with claims for other types of disability benefits, such as workers' compensation, benefits under programs of the Department of Veterans Affairs, or private insurance benefits. However, the lack of consistency between an individual's statements and other statements that he or she has made at other times does not necessarily mean that the individual's statements are not credible. Symptoms may vary in their intensity, persistence, and functional effects, or may worsen or improve with time, and this may explain why the individual does not always allege the same intensity, persistence, or functional effects of his or her symptoms. Therefore, the adjudicator will need to review the case record to determine whether there are any explanations for any variations in the individual's statements about symptoms and their effects.
- The consistency of the individual's statements with other information in the case record, including reports and observations by other persons concerning the individual's daily activities, behavior, and efforts to work. This includes any observations recorded by SSA employees in interviews and observations recorded by the adjudicator in administrative proceedings.

Medical Evidence

Symptoms cannot be measured objectively through clinical or laboratory diagnostic techniques; however, their effects can often be clinically observed. The regulations at 20 CFR 404.1529(c)(2) and 416.929(c)(2) provide that objective medical evidence "is a useful indicator to assist us in making reasonable conclusions about the intensity and persistence of" an individual's symptoms and the effects those symptoms may have on the

[5] The seven factors are also set out in the "Introduction," above.

individual's ability to function. The examples in the regulations (reduced joint motion, muscle spasm, sensory deficit, and motor disruption) illustrate findings that may result from, or be associated with, the symptom of pain. When present, these findings tend to lend credibility to an individual's allegations about pain or other symptoms and their functional effects.

When there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the pain or other symptoms, the adjudicator must always attempt to obtain any available objective medical evidence concerning the intensity and persistence of the pain or other symptoms, and, when such evidence is obtained, must consider it in evaluating the individual's statements. However, allegations concerning the intensity and persistence of pain or other symptoms may not be disregarded *solely* because they are not substantiated by objective medical evidence. A report of negative findings from the application of medically acceptable clinical and laboratory diagnostic techniques is one of the many factors that appropriately are to be considered in the overall assessment of credibility. However, the absence of objective medical evidence supporting an individual's statements about the intensity and persistence of pain or other symptoms is only one factor that the adjudicator must consider in assessing an individual's credibility and must be considered in the context of all the evidence.

Over time, there may also be medical signs and laboratory findings that, though not directly supporting or refuting statements about the intensity or persistence of pain or other symptoms, demonstrate worsening or improvement of the underlying medical condition. Such signs and findings may also help an adjudicator to draw appropriate inferences about the credibility of an individual's statements.

Apart from the medical signs and laboratory findings, the medical evidence, especially a longitudinal medical record, can be extremely valuable in the adjudicator's evaluation of an individual's statements about pain or other symptoms.

Important information about symptoms recorded by medical sources and reported in the medical evidence may include:

- Onset, description of the character and location of the symptoms, precipitating and aggravating factors, frequency and duration, course over time (e.g., whether worsening, improving, or static), and daily activities. Very often, this information will have been obtained by the medical source from the individual and may be compared with the individual's other statements in the case record. However, the evidence provided by a medical source may also contain medical opinions of the source about the individual's symptoms and their effects, and such opinions must be weighed applying the factors in 20 CFR 404.1527 and 416.927.
- A longitudinal record of any treatment and its success or failure, including any side effects of medication.
- Indications of other impairments, such as potential mental impairments, that could account for the allegations.

Although longitudinal records showing regular contact with a treating source are the most desirable, longitudinal medical records can be valuable even when they are not treating source records. For example, an individual may receive treatment at a clinic and see different physicians, but the clinic records may still show a longitudinal history of complaints and attempts at relief.

Medical Treatment History

In general, a longitudinal medical record demonstrating an individual's attempts to seek medical treatment for pain or other symptoms and to follow that treatment once it is prescribed lends support to an individual's allegations of intense and persistent pain or other symptoms for the purposes of judging the credibility of the individual's statements. Persistent attempts by the individual to obtain relief of pain or other symptoms, such as by increasing medications, trials of a variety of treatment modalities in an attempt to find one that works or that does not have side effects, referrals to specialists, or changing treatment sources may be a strong indication that the symptoms are a source of distress to the individual and generally lend support to an individual's allegations of intense and persistent symptoms.[6]

On the other hand, the individual's statements may be less credible if the level or frequency of treatment is inconsistent with the level of complaints, or if the medical reports or records show that the individual is not following the treatment as prescribed and there are no good reasons for this failure. However, the adjudicator must not draw any inferences about an individual's symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record, that may explain infrequent or irregular medical visits or failure to seek medical treatment. The adjudicator may need to recontact the individual or question the individual at the administrative proceeding in order to determine whether there are good reasons the individual does not seek medical treatment or does not pursue treatment in a consistent manner. The explanations provided by the individual may provide insight into the individual's credibility. For example:

- The individual's daily activities may be structured so as to minimize symptoms to a tolerable level or eliminate them entirely, avoiding physical or mental stressors that would exacerbate the symptoms. The individual may be living with the symptoms, seeing a medical source only as needed for periodic evaluation and renewal of medications.
- The individual's symptoms may not be severe enough to prompt the individual to seek ongoing medical attention or may be relieved with over-the-counter medications.
- The individual may not take prescription medication because the side effects are less tolerable than the symptoms.
- The individual may be unable to afford treatment and may not have access to free or low-cost medical services.
- The individual may have been advised by a medical source that there is no further, effective treatment that can be prescribed and undertaken that would benefit the individual.
- Medical treatment may be contrary to the teaching and tenets of the individual's religion.

Other Sources of Information

Other sources may provide information from which inferences and conclusions may be drawn about the credibility of the individual's statements. Such sources may provide information about the seven factors listed in the regulations and may be especially helpful in establishing a longitudinal record. Examples of such sources include public and private agencies, other practitioners, and nonmedical sources such as family and friends.

[6] The adjudicator must also remember that medical treatment need not always be specifically for the relief of a symptom. Often, treatment will be aimed at ameliorating the underlying medical condition which, in turn, may result in improvement in symptoms. The treatment may also cause symptoms as a side effect.

Observations of the Individual

In instances in which the adjudicator has observed the individual, the adjudicator is not free to accept or reject the individual's complaints solely on the basis of such personal observations, but should consider any personal observations in the overall evaluation of the credibility of the individual's statements.

In evaluating the credibility of the individual's statements, the adjudicator must also consider any observations recorded by SSA personnel who previously interviewed the individual, whether in person or by telephone.

Consideration of Findings by State Agency and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review

Under 20 CFR 404.1527(f) and 416.927(f), administrative law judges and the Appeals Council are required to consider findings of fact by State agency medical and psychological consultants and other program physicians and psychologists about the existence and severity of an individual's impairment(s), including the existence and severity of any symptoms, as opinions of nonexamining physicians and psychologists. Administrative law judges and the Appeals Council are not bound by any State agency findings, but they may not ignore these opinions and must explain the weight given to the opinions in their decisions. Therefore, if the case record includes a finding by a State agency medical or psychological consultant or other program physician or psychologist on the credibility of the individual's statements about limitations or restrictions due to symptoms, the adjudicator at the administrative law judge or Appeals Council level of administrative review must consider and weigh this opinion of a nonexamining source under the applicable rules in 20 CFR 404.1527 and 416.927 and must explain the weight given to the opinion in the decision. (See SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.")

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims," SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;" and Program Operations Manual System, sections DI 24515.061 and DI 24515.064.B.3.

[FR Doc. 96–16690 Filed 7–1–96; 8:45 am]

BILLING CODE 4190–29–P

Social Security Ruling (SSR) 96–4p. Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–4p. This Ruling clarifies the Social Security Administration's longstanding policy on the evaluation of symptoms in the adjudication of claims for disability benefits under Title II, Federal Old-Age, Survivors, and Disability Insurance Benefits, and Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations

Purpose: The purpose of this Ruling is to clarify longstanding policy of the Social Security Administration on the evaluation of symptoms in the adjudication of claims for disability benefits under title II and title XVI of the Social Security Act (the Act). In particular, this Ruling emphasizes that:

1. A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment.

2. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

3. The terms "exertional" and "nonexertional" in the regulations describe types of functional limitations or restrictions resulting from a medically determinable physical or mental impairment; i.e., exertional limitations affect an individual's ability to meet the strength demands of jobs, and nonexertional limitations or restrictions affect an individual's ability to meet the nonstrength demands of jobs. Therefore, a symptom in itself is neither exertional nor nonexertional. Rather, it is the nature of the functional limitations or restrictions caused by an

impairment-related symptom that determines whether the impact of the symptom is exertional, nonexertional, or both.

4. The application of the medical-vocational rules in appendix 2 of subpart P of Regulations No. 4 depends on the nature of the limitations and restrictions imposed by an individual's medically determinable physical or mental impairment(s), and any related symptoms.

Citations (Authority): Sections 216(i), 223(d) and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1505, 404.1508, 404.1520, 404.1528(a), 404.1529, 404.1569a and subpart P, appendix 2; and Regulations No. 16, sections 416.905, 416.908, 416.920, 416.924, 416.928(a), 416.929 and 416.969a.

Policy Interpretation

Need To Establish the Existence of a Medically Determinable Physical or Mental Impairment

The Act defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[1] An "impairment" must result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. Although the regulations provide that the existence of a medically determinable physical or mental impairment must be established by medical evidence consisting of signs, symptoms,[2] and laboratory findings, the regulations further provide that under no circumstances may the existence of an impairment be established on the basis of symptoms alone. Thus, regardless of how many symptoms an individual alleges, or how genuine the individual's complaints may appear to be, the existence of a medically determinable physical or mental impairment cannot be established in the absence of objective medical abnormalities; i.e., medical signs and laboratory findings.

No symptom or combination of symptoms by itself can constitute a medically determinable impairment. In claims in which there are no medical signs or laboratory findings to substantiate the existence of a medically determinable physical or mental impairment, the individual must be found not disabled at step 2 of the sequential evaluation process set out in 20 CFR 404.1520 and 416.920 (or, for an individual under age 18 claiming disability benefits under title XVI, 20 CFR 416.924).

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities (or, for an individual under age 18 claiming disability benefits under title XVI, to function independently, appropriately, and effectively in an age-appropriate manner) unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Exertional and Nonexertional Limitations

Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the pain or other symptoms alleged has been established on the basis of medical signs and laboratory findings, allegations about the intensity and persistence of the symptoms must be considered with the objective medical abnormalities, and all other evidence in the case record, in evaluating the functionally limiting effects of the impairment(s). In addition, for determinations or decisions at step 5 of the sequential evaluation process for individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI, 20 CFR 404.1569a and 416.969a explain that an individual's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions that limit an individual's ability to meet certain demands of jobs. These sections divide limitations or restrictions into three classifications: Exertional, nonexertional, and combined exertional and nonexertional. Exertional limitations or restrictions affect an individual's ability to meet the seven strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), while nonexertional limitations or restrictions affect an individual's ability to meet the nonstrength demands of jobs (all physical limitations and restrictions that are not reflected in the seven strength demands, and mental limitations and restrictions). The nature of the limitations or restrictions affects whether the rules in appendix 2 to subpart P of Regulations No. 4 may be used to direct a decision or must be used as a framework for decisionmaking.

Likewise, under the regulations, symptoms in themselves are neither exertional nor nonexertional. An individual's symptoms, however, can cause limitations or restrictions that are classified as exertional, nonexertional, or a combination of both. For example, pain can result in an exertional limitation if it limits the ability to perform one of the strength activities (e.g., lifting), or a nonexertional limitation if it limits the ability to perform a nonstrength activity (e.g., fingering or concentrating). It is the nature of the limitations or restrictions resulting from the symptom (i.e., exertional, nonexertional, or both) that will determine whether the medical-vocational rules in appendix 2 may be used to direct a decision or must be used as a framework for decisionmaking. For additional discussion of this longstanding policy, see SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims."

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements," and SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" and Program Operations Manual System, sections DI 24501.020, DI 24515.061, and DI 24515.063.

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[1] This definition of disability applies to individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. For title XVI, an individual under age 18 will be considered disabled if he or she is suffering from a medically determinable physical or mental impairment of comparable severity to an impairment that would disable an adult.

[2] 20 CFR 404.1528, 404.1529, 416.928, and 416.929 provide that symptoms, such as pain, fatigue, shortness of breath, weakness or nervousness, are an individual's own perception or description of the impact of his or her physical or mental impairment(s). (20 CFR 416.928 further provides that, for an individual under age 18 who is unable to adequately describe his or her symptom(s), the adjudicator will accept as a statement of this symptom(s) the description given by the person most familiar with the individual, such as a parent, other relative, or guardian.) However, when any of these manifestations is an anatomical, physiological, or psychological abnormality that can be shown by medically acceptable clinical diagnostic techniques, it represents a medical "sign" rather than a "symptom."

[Social Security Ruling (SSR) 96–2p.]

Titles II and XVI: Giving Controlling Weight To Treating Source Medical Opinions

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–2p. This Ruling explains terms used in the Social Security Administration regulations on evaluating medical opinions concerning when treating source medical opinions are entitled to controlling weight, and clarifies how the policy is applied.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Giving Controlling Weight To Treating Source Medical Opinions

Purpose: To explain terms used in our regulations on evaluating medical opinions concerning when treating source medical opinions are entitled to controlling weight, and to clarify how the policy is applied. In particular, to emphasize that:

1. A case cannot be decided in reliance on a medical opinion without some reasonable support for the opinion.

2. Controlling weight may be given only in appropriate circumstances to medical opinions, i.e., opinions on the issue(s) of the nature and severity of an individual's impairment(s), from treating sources.

3. Controlling weight may not be given to a treating source's medical opinion unless the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques.

4. Even if a treating source's medical opinion is well-supported, controlling weight may not be given to the opinion unless it also is "not inconsistent" with the other substantial evidence in the case record.

5. The judgment whether a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record requires an understanding of the clinical signs and laboratory findings and what they signify.

6. If a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it *must* be given controlling weight; i.e., it must be adopted.

7. A finding that a treating source's medical opinion is not entitled to controlling weight does not mean that the opinion is rejected. It may still be entitled to deference and be adopted by the adjudicator.

Citations (Authority): Sections 205(a), 216(i), 223(d), 1614(a)(3), and 1631(d) of the Social Security Act, as amended; Regulations No. 4, sections 404.1502 and 404.1527, and Regulations No. 16, sections 416.902 and 416.927.

Pertinent History: Our regulations at 20 CFR 404.1502, 404.1527, 416.902, and 416.927 were revised on August 1, 1991, to define who we consider to be a "treating source" and to set out detailed rules for evaluating treating source medical opinions and other opinions. Among the provisions of these rules is a special provision in 20 CFR 404.1527(d)(2) and 416.927(d)(2) that requires adjudicators to adopt treating source medical opinions (i.e., opinions on the issue(s) of the nature and severity of an individual's impairment(s)) in one narrowly defined circumstance. As we stated in the preamble to the publication of the final rules:

> The provision recognizes the deference to which a treating source's medical opinion should be entitled. It does not permit us to substitute our own judgment for the opinion of a treating source on the issue(s) of the nature and severity of an impairment when the treating source has offered a medical opinion that is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence.

56 FR 36932, 36936 (1991).

Policy Interpretation: Explanation of Terms

Controlling weight. This is the term used in 20 CFR 404.1527(d)(2) and 416.927(d)(2) to describe the weight we give to a medical opinion from a treating source that must be adopted. The rule on controlling weight applies when *all* of the following are present:

1. The opinion must come from a "treating source," as defined in 20 CFR 404.1502 and 416.902. Although opinions from other acceptable medical sources may be entitled to great weight, and may even be entitled to more weight than a treating source's opinion in appropriate circumstances, opinions from sources other than treating sources can never be entitled to "controlling weight."

2. The opinion must be a "medical opinion." Under 20 CFR 404.1527(a) and 416.927(a), "medical opinions" are opinions about the nature and severity of an individual's impairment(s) and are the only opinions that may be entitled to controlling weight. (See SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.")

3. The adjudicator must find that the treating source's medical opinion is "well-supported" by "medically acceptable" clinical and laboratory diagnostic techniques. The adjudicator cannot decide a case in reliance on a medical opinion without some reasonable support for the opinion.

4. Even if well-supported by medically acceptable clinical and laboratory diagnostic techniques, the treating source's medical opinion also must be "not inconsistent" with the other "substantial evidence" in the individual's case record.

If any of the above factors is not satisfied, a treating source's opinion cannot be entitled to controlling weight. It is an error to give an opinion controlling weight simply because it is the opinion of a treating source if it is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or if it is inconsistent with the other substantial evidence in the case record. However, when all of the factors are satisfied, the adjudicator *must* adopt a treating source's medical opinion irrespective of any finding he or she would have made in the absence of the medical opinion.

For a medical opinion to be *well-supported* by medically acceptable clinical and laboratory diagnostic techniques, it is not necessary that the opinion be *fully* supported by such evidence. Whether a medical opinion is well-supported will depend on the facts of each case, It is a judgment that adjudicators must make based on the extent to which the opinion is supported by medically acceptable clinical and laboratory diagnostic techniques and requires an understanding of the clinical signs and laboratory findings in the case record and what they signify.

It is not unusual for a single treating source to provide medical opinions about several issues; for example, at least one diagnosis, a prognosis, and an opinion about what the individual can still do. Although it is not necessary in every case to evaluate each treating source medical opinion separately, adjudicators must always be aware that one or more of the opinions may be controlling while others may not. Adjudicators must use judgment based on the facts of each case in determining whether, and the extent to which, it is necessary to address separately each medical opinion from a single source.

Medically acceptable. This term means that the clinical and laboratory diagnostic techniques that the medical source uses are in accordance with the medical standards that are generally accepted within the medical community as the appropriate techniques to establish the existence and severity of an impairment. The requirement that controlling weight can be given to a treating source medical opinion only if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques helps to ensure that there is a sound medical basis for the opinion.

Not inconsistent. This is a term used to indicate that a well-supported treating source medical opinion need not be supported directly by all of the other evidence (i.e., it does not have to be *consistent* with all the other evidence) as long as there is no other substantial evidence in the case record that contradicts or conflicts with the opinion.

Whether a medical opinion is "not inconsistent" with the other substantial evidence is a judgment that adjudicators must make in each case. Sometimes, there will be an obvious inconsistency between the opinion and the other substantial evidence; for example, when a treating source's report contains an opinion that the individual is significantly limited in the ability to do work-related activities, but the opinion is inconsistent with the statements of the individual's spouse about the individual's actual activities, or when two medical sources provide inconsistent medical opinions about the same issue. At other times, the inconsistency will be less obvious and require knowledge about, or insight into, what the evidence means. In this regard, it is especially important to have an understanding of the clinical signs and laboratory findings and any treatment provided to determine whether there is an inconsistency between this evidence and medical opinions about such issues as diagnosis, prognosis (for example, when deciding whether an impairment is expected to last for 12 months), or functional effects. Because the evidence is in medical, not lay, terms and information about these issues may be implied rather than stated, such an inconsistency may not be evident without an understanding of what the clinical signs and laboratory findings signify.

Substantial evidence. This term describes a quality of evidence. Substantial evidence is "* * * more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Richardson* v. *Perales,* 402 U.S. 389 (1971), SSR 71–53c, C.E. 1971–1975, p. 418.) The term is intended to have this same meaning in 20 CFR 404.1527(d)(2) and 416.927(d)(2). It is intended to indicate that the evidence that is inconsistent with the opinion need not prove by a preponderance that the opinion is wrong. It need only be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion that is contrary to the conclusion expressed in the medical opinion.

Depending upon the facts of a given case, any kind of medical or nonmedical evidence can potentially satisfy the substantial evidence test. For example, a treating source's medical opinion on what an individual can still do despite his or her impairment(s) will not be entitled to controlling weight if substantial, nonmedical evidence shows that the individual's actual activities are greater than those provided in the treating source's opinion. The converse is also true: Substantial evidence may demonstrate that an individual's ability to function may be less than what is indicated in a treating source's opinion, in which case the opinion will also not be entitled to controlling weight.

When a Treating Source's Medical Opinion Is Not Entitled to Controlling Weight

Adjudicators must remember that a finding that a treating source medical opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with the other substantial evidence in the case record means only that the opinion is not entitled to "controlling weight," not that the opinion should be rejected. Treating source medical opinions are still entitled to deference and must be weighed using all of the factors provided in 20 CFR 404.1527 and 416.927. In many cases, a treating source's medical opinion will be entitled to the greatest weight and should be adopted, even if it does not meet the test for controlling weight.

Also, in some instances, additional development required by a case—for example, to obtain more evidence or to clarify reported clinical signs or laboratory findings—may provide the requisite support for a treating source's medical opinion that at first appeared to be lacking or may reconcile what at first appeared to be an inconsistency between a treating source's medical opinion and the other substantial evidence in the case record. In such instances, the treating source's medical opinion will become controlling if, after such development, the opinion meets the test for controlling weight. Conversely, the additional development may show that the treating source's medical opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or may create an inconsistency between the medical opinion and the other substantial evidence in the case record, even though the medical opinion at first appeared to meet the test for controlling weight. Ordinarily, development should not be undertaken for the purpose of determining whether a treating source's medical opinion should receive controlling weight if the case record is otherwise adequately developed. However, in cases at the administrative law judge (ALJ) or Appeals Council (AC) level, the ALJ or the AC may need to

consult a medical expert to gain more insight into what the clinical signs and laboratory findings signify in order to decide whether a medical opinion is well-supported or whether it is not inconsistent with other substantial evidence in the case record.

Explanation of the Weight Given to a Treating Source's Medical Opinion

Paragraph (d)(2) of 20 CFR 404.1527 and 416.927 requires that the adjudicator will always give good reasons in the notice of the determination or decision for the weight given to a treating source's medical opinion(s), i.e., an opinion(s) on the nature and severity of an individual's impairment(s). Therefore:

- When the determination or decision:

—Is not fully favorable, e.g., is a denial; or

—is fully favorable based in part on a treating source's medical opinion, e.g., when the adjudicator adopts a treating source's opinion about the individual's remaining ability to function;

the notice of the determination or decision must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight.

- When the determination or decision is fully favorable and would be even without consideration of a treating source's medical opinion, the notice of the determination or decision must contain an explanation of the weight given to the treating source's medical opinion. This explanation may be brief.

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner;" Program Operations Manual System, sections DI 22505.001, and DI 24515.001–24515.003; Hearings, Appeals, and Litigation Law manual, sections I–2–530, I–2–532, I–2–534, I–2–539, I–2–540, I–2–825, I–3–111, I–3–712, I–3–812, and Temporary Instruction 5–310.

[FR Doc. 96–16685 Filed 7–1–96; 8:45 am]

BILLING CODE 4190–29–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 3002, published on January 30, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

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 January 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on June 27, 1996, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	987,044 dozen.
342/642	364,373 dozen.
347/348	1,663,387 dozen.
443	216,806 numbers.
447	12,517 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16820 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 17, 1996 (61 FR 16762) announces that if no solution is agreed upon in consultations between the Governments of the United States and El Salvador on Categories 342/642, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 209,563 dozen for the twelve-month period beginning on March 29, 1996 and extending through March 28, 1997.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution on Categories 342/642, the United States Government has decided to control imports in these categories for the period beginning on March 29, 1996 and extending through March 28, 1997 at a level of 209,563 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a mutual solution concerning Categories 342/642. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on June 27, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 29, 1996 and extending through March 28, 1997, in excess of 209,563 dozen [1].

[1] The limit has not been adjusted to account for any imports exported after March 28, 1996.

Textile products in Categories 342/642 which have been exported to the United States prior to March 29, 1996 shall not be subject to the limit established in this directive.

Textile products in Categories 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the efffective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16803 Filed 6–27–96; 12:03 pm]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Categories 443 and 448 are being increased by application of swing, reducing the limit for Categories 351/651 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62398, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treosury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on July 1, 1996 you are directed to adjust the limits for the following categories, as provided for by the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
351/651	270,476 dozen.
443	81,654 numbers.
448	46,391 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16821 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Malaysia

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 336/636 is being reduced for carryforward used during the previous period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62394, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

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 November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 1, 1996, you are directed to reduce the limit for Categories 336/636 to 413,061 dozen[1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16822 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62393, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

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 November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 2, 1996, you are directed to amend the November 29, 1995 directive to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
219	7,636,274 square meters.
226/313	113,687,603 square meters.
237	296,468 dozen.
239	1,157,963 kilograms.
314	5,553,654 square meters.
315	70,503,799 square meters.
317/617	29,844,402 square meters.
331/631	2,397,501 dozen pairs.
334/634	267,867 dozen.
335/635	328,892 dozen.
336/636	455,565 dozen.
338	4,807,211 dozen.
340/640	609,142 dozen of which not more than 200,757 dozen shall be in Categories 340–D/640–D[2].
341/641	668,522 dozen.
342/642	330,883 dozen.
347/348	845,231 dozen.
351/651	290,178 dozen.
352/652	716,033 dozen.
359–C/659–C[3]	1,230,909 kilograms.
363	42,975,448 numbers.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

Category	Adjusted twelve-month limit [1]
369–F/369–P [4]	2,214,872 kilograms.
369–R [5]	10,024,470 kilograms.
369–S [6]	655,830 kilograms.
613/614	20,248,735 square meters.
615	21,944,309 square meters.
625/626/627/628/629	66,884,707 square meters of which not more than 33,177,281 square meters shall be in Category 625; not more than 33,177,281 square meters shall be in Category 626; not more than 33,177,281 square meters shall be in Category 627; not more than 6,864,265 square meters shall be in Category 628; and not more than 33,177,281 square meters shall be in Category 629.
638/639	204,796 dozen.
647/648	678,467 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16823 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit and Amendment of Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit and amending visa requirements.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The United States Government has decided to cancel the current limit on imports of man-made fiber luggage in Category 670–L from Sri Lanka established on January 1, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 670–L for the period January 1, 1996 through December 31, 1996. Also, for goods produced or manufactured in Sri Lanka, visa requirements are being amended to no longer require a 670–L and 670–O part-category visa. Goods in Category 670 shall not be denied entry if visaed as 670, 670–L or 670–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 53 FR 34573, published on September 7, 1988; and 60 FR 66265, published on December 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

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 December 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 1, 1996, you are directed to cancel the current limit for Category 670–L [1].

For visa purposes, you are directed to amend the directive dated September 1, 1988 to no longer require a 670–L and 670–O [2] part-category visa. Goods in Category 670 shall not be denied entry if visaed as 670, 670–L or 670–O.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16825 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota

[1] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[2] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62396, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

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 November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on June 27, 1996, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	17,386,624 numbers.
619	5,787,631 square meters.
Sublevels in Group II	
442	19,037 dozen.
638/639	1,937,966 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.96–16824 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

USTR Allocation of the Tariff-Rate Quota Increase for Raw Cane Sugar; Announcement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the 150,000 metric ton increase in the tariff-rate quota for imported raw cane sugar for the period that begins October 1, 1995, and ends September 30, 1996. This is in addition to the previous allocations of the tariff-rate quota of 2,017,195 mt for imported raw cane sugar.

EFFECTIVE DATE: June 12, 1996.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT:

Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw sugar. The in-quota quantity of the tariff-rate quota for the period October 1, 1995–September 30, 1996, has been increased by 150,000 metric tons by the Secretary of Agriculture, resulting in a new total of 2,167,195 metric tons, raw value.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

I have determined to allocate the increase in the tariff-rate quota among supplying countries or customs areas. Accordingly, the country-by-country tariff-rate quota allocations in metric tons, raw value, for raw cane sugar allowed into the United States at the in-quota quantity tariff rate for the October 1, 1995-September 30, 1996, period are as follows:

1995–96 RAW SUGAR TRQ ALLOCATION

Country [1] [2]	Current FY 1996 allocation	New additional allocation	FY 1996 allocation
Argentina	85,741	10,125	95,866
Australia	165,500	19,544	185,044
Barbados	12,311	0	12,311
Belize	21,934	2,590	24,524
Bolivia	15,952	1,884	17,836
Brazil	289,127	34,144	323,270
Colombia	47,855	5,651	53,507
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	29,910	3,532	33,442
Dominican Republic	350,940	0	350,940
Ecuador	21,934	2,590	24,524

1995–96 RAW SUGAR TRQ ALLOCATION—Continued

Country [1] [2]	Current FY 1996 allocation	New additional allocation	FY 1996 allocation
El Salvador	51,843	6,122	57,966
Fiji	17,946	2,119	20,065
Gabon	7,258	0	7,258
Guatemala	95,711	11,303	107,014
Guyana	23,928	2,826	26,753
Haiti	7,258	0	7,258
Honduras	19,940	2,355	22,295
India	15,952	0	15,952
Jamaica	21,934	2,590	24,524
Madagascar	7,258	0	7,258
Malawi	19,940	2,355	22,295
Mauritius	23,928	2,826	26,753
Mexico	7,258	0	7,258
Mozambique	25,922	3,061	28,983
Nicaragua	41,873	4,945	46,818
Panama	57,825	0	57,825
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	81,753	9,654	91,407
Philippines	237,422	0	237,422
South Africa	45,861	5,416	51,277
St. Kitts & Nevis	7,258	0	7,258
Swaziland	31,904	3,768	35,671
Taiwan	23,928	2,826	26,753
Thailand	27,916	3,297	31,212
Trinidad-Tobago	13,958	1,648	15,606
Uruguay	7,258	0	7,258
Zimbabwe	23,928	2,826	26,753
	2,017,195	150,000	2,167,195

[1] Additional increases in the TRQ were not allocated to Barbados, the Dominican Republic, India, Panama and the Philippines at this time because market conditions indicate they are unable to supply additional sugar.

[2] The additional allocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote D'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay. The previously announced minimum allocation for these countries exceeds the base import quota plus any additional increases in the tariff-rate quota.

Conversion factor: 1 metric ton=1.10231125 short tons.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–16759 Filed 7–1–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 30, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1190.

Date filed: December 28, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995.

Description: Application of Challengair, S.A., pursuant to 49 U.S.C. Section 40109, applies for a foreign air carrier permit, to perform charter foreign air transportation of persons, property and/or mail between a point or points in the Kingdom of Belgium and a point or points in the United States, commencing upon approval of this Application or upon the granting of exemption authority—for which ChallengAir also files.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–16804 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements; Agency information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to the Office of Management and Budget, New Executive Office

Building, Room 10202, Attention DOT/FAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft-FAR 121.

OMB Control Number: 2120–0008.

Abstract: Each operation which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of FAR 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum standards.

Need: Title 49, United States Code, Section 44701, prescribes the requirements governing air carrier operations. Air carriers are respondents and the information collected is used to determine operators compliance and applicant eligibility.

Respondents: The respondents are an estimated 140 air carriers and commercial operators certificated under FAR 121.

Frequency: Annually.

Burden: The estimated total burden is 3.3 million hours.

Title: Aviator Safety Studies.

OMB Control Number: 2120–0587.

Abstract: In order to conduct effective research on the contribution of pilots to aircraft accidents, data are required on the normative distribution of various pilot attributes and their association with accident

Need: In order to develop effective intervention programs to improve safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical decisions. The information collected will be used to develop new training methods particularly suited to general aviation pilots.

Respondents: The respondents are an estimated 4,000 certified pilots.

Frequency: On occasion.

Burden: The estimated total burden is 8,000 hours.

Issued in Washington, DC, on June 27, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–16864 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Porsche

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On June 2, 1989, this agency granted Porsche Cars of North America, Inc.'s (Porsche) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the 911 and 928 car lines. On September 9, 1994, the agency determined that the proposed changes made on the 911 antitheft device for model year (MY) 1995 were *de minimis* changes and did not require Porsche to submit a petition to modify its exemption pursuant to 49 CFR 543.9(c)(2). This notice grants Porsche's petition for a new modification to its previously approved antitheft device for the 911 car line beginning with the 1998 model year. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in Porsche's petition to be placed on the car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In its MY 1989 petition, Porsche included a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the MY 1990 Porsche 911 and 928 car lines. The antitheft device consisted of a central-locking system, a starter-interrupt feature and an audible and visible alarm system. The device was activated by locking either the driver or passenger door with the ignition key. When the ignition key was used to lock either the driver or passenger door, the remaining door was automatically locked. When all the doors were locked, the vehicle's alarm system automatically armed to monitor the protected areas of the vehicle. The alarm monitored the doors, front hood, rear trunk (911) or hatch (928), radio and ignition switch. If any of the protected areas were violated, the alarm horn would sound, and the fog and brake lights would flash. In its petition, Porsche stated that the car would not start as long as the alarm remained armed. Disarming the device was accomplished by unlocking either the driver or passenger door with the ignition key. The agency determined that the antitheft device Porsche intended to install on the MY 1990 911 and 928 car lines as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

In its MY 1995 request for modification, Porsche included a detailed description of the identity, design and location of the components of the antitheft device, including diagrams of components and their location in the vehicle. Porsche stated that the MY 1995 device added a remote control, automatic activation and expanded anti-start features to the MY 1990 device. Porsche also described the antitheft device installed as standard equipment as passively activated. By letter dated September 9, 1994, the agency determined that the proposed changes made on the MY 1995 911 antitheft device were *de minimis* changes and did not require Porsche Cars North America, Inc. (Porsche) to submit a petition to modify its exemption. The agency determined that the antitheft device, which Porsche intended to install on the 911 car line as standard equipment, would be likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard.

By letter dated February 21, 1996, Porsche submitted its petition for a second modification to its previously approved antitheft device. Porsche's submittal is a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Porsche stated that the antitheft device on the MY 1998 car line differs from the MY 1995 device in that it is simpler and better integrated. In the MY 1998 device, the disablement of the engine can only be accomplished by using the key in the ignition, while in the MY 1995 device it could be done through the use of the remote control. Also, in the MY 1995 antitheft device the vehicle could only be locked or unlocked using the remote control, while in the MY 1998 antitheft device, it can be done by using the key or the remote control.

The MY 1998 antitheft device will consist of a micro-processor based immobilizer system, which prevents the engine management system from functioning when the system is engaged, and a central-locking and alarm system. The immobilizer system is automatically activated by removing the correct key from the ignition switch/steering lock. The ignition key contains a radio signal transponder which sends a signal to the control unit to allow the engine to start. According to Porsche, only by inserting the proper key into the ignition switch will the correct signal be sent to the control unit. The time for the control unit to verify the correct signal takes only milliseconds and is completed in the time it takes to turn the key to start the engine. Disablement of the immobilizer system is virtually impossible, since the only way to enable the engine management system is by using the correct ignition key to send the proper code to the immobilizer system, which then signals the engine management system to operate. Removal of the key returns the device to its normal "off" state where engine operation is impossible. Therefore, even if the driver/operator forgets to lock the doors upon leaving the vehicle, an unauthorized person will be unable to move the vehicle unless the proper ignition key is used to disable the immobilizer system.

Porsche also stated that, for MY 1998, the antitheft device will feature a central-locking system that can be activated by using either the ignition key or the remote control. When either the ignition key or the remote control is used to lock any door, all doors are locked and the vehicle's alarm system is automatically armed to monitor the protected areas of the vehicle. The device monitors for opening of the doors, front luggage compartment, rear decklid, fuel filler door, soft top storage compartment, glove compartment, radio contact switches and interior movement via an infra-red sensor. If one of the protected areas of the vehicle is violated, the horn will sound and the lights will flash.

The antitheft device will function separately from the immobilizer system in that the immobilizer system cannot be disabled by any manipulation of the door locks or the central-locking system. Porsche states that any manipulation of the door locks or the central-locking system will not disable the immobilizer system because neither the door locks or the central-locking system are capable of sending the necessary codes to the control unit. When the alarm system is armed, a "safe" function is activated that removes the mechanical link between the inside and outside door handles and the locking mechanism. This prevents the manipulation of the door handles from having any influence on the door locks.

Porsche states that an unauthorized person will be unable to operate the vehicle without the use of the proper key. Porsche also states that disconnection of power to the antitheft device or the engine management system does not affect their operation.

The immobilizer and alarm systems are located within the passenger compartment of the vehicle. The control unit is located under the driver seat and the battery and alarm horn are inaccessibly located inside the front trunk of the vehicle.

Porsche addressed the reliability and durability of its antitheft device by providing a list of specific tests that ensure the system's integrity. The tests included testing for extreme temperature, voltage spike, reverse polarity, electromagnetic interference, vibration and endurance. Additionally, the antitheft device utilizes a built-in self test which constantly checks for system failures. If a failure is detected, the driver/operator is signaled by the alarm indicator.

Porsche compares its MY 1998 antitheft device to similar devices that have previously been granted exemptions by the agency. It compared its proposed device to devices that do not have alarms such as the General Motors' PASS-Key device, the Mercedes-Benz 202 car line device and the Porsche MY 1997 (confidential nameplate) device. Porsche states that the agency has previously determined that these devices without alarms are as effective as parts marking. Therefore, Porsche contends that since the MY 1998 device will include the same features and an alarm as standard equipment, its device will also be as effective in reducing and deterring theft as parts marking. Based on data from the FBI's National Crime Information Center, NHTSA's official source of theft data, Porsche showed that the theft rate of the Chevrolet Camaro fell below the median after installation of the PASS-Key device in MY 1989. Porsche reports that for MY 1988, the Chevrolet Camaro had a theft rate of 25.7394 (per thousand vehicles produced) and for MY 1993, it fell to 2.7243. Preliminary theft data for MY 1994 show that theft rates for the Chevrolet Camaro and Mercedes-Benz 202 car lines remain below the median of 3.5826. The preliminary data for MY 1994 show a theft rate of 3.5375 for the Chevrolet Camaro and 1.3810 for the Mercedes-Benz 202 car line. Porsche also stated that other GM models equipped with the PASS-KEY device, such as the Pontiac Firebird and Chevrolet Corvette, have shown large decreases in theft rates. Preliminary theft data for MY 1994 show a theft rate of 3.0927 for the Pontiac Firebird and 4.5884 for the Chevrolet Corvette. Additionally, Porsche reaffirmed that its MY 1998 device will provide engine disablement for its 911 line, which it believes is at least as effective as that provided by the GM PASS-Key device.

For these reasons, Porsche believes that the antitheft device proposed for installation on its 911 car line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft device installed as standard equipment on the MY 1998 Porsche 911 car line will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR part 541). This determination is based on the information that Porsche submitted with its petition and other available information. The agency believes that the modified device will continue to provide the types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR 543.6(a)(4), the agency also finds that Porsche has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This information included a description of reliability and functional tests conducted by Porsche for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the Porsche 911 car line that is the subject of this notice, in

whole, from the requirements of 49 CFR part 541.

If, in the future, Porsche decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 27, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–16840 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0055.

Title and Form Number: Request for Determination of Loan Guaranty Eligibility—Unremarried Surviving Spouses, VA Form 26–1817.

Type of Review: Extension of a currently approved collection.

Need and Uses: A completed VA Form 26–1817 constitutes a formal request by an unremarried surviving spouse of a veteran for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

Current Actions: Title 38, U.S.C., 3701(b)(2), authorizes the VA to extend home loan benefits to unremarried surviving spouses of veterans whose deaths occurred either while serving on active duty or were a direct result of service-connected disabilities.

Affected Public: Individuals or households.

Estimated Annual Burden: 187 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16779 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0092.

Title and Form Number: Counseling Record—Personal Information, VA Form 28–1902.

Type of Review: Extension of a currently approved collection.

Need and Uses: A counseling psychologist uses the form to evaluate veteran claimants and assist eligible veterans to plan a suitable program of vocational rehabilitation. If needed, VA must develop a program of assistance and services to improve the veteran's potential to participate in vocational

rehabilitation. VA must also provide counseling services to help a veteran or other beneficiary to select an educational, training, or employment objective.

Current Actions: VA Form 28–1902 is used as part of the application for benefits, primary for Title 38 U.S.C., Chapter 31, vocational rehabilitation, but also for counseling under other VA educational benefit programs. The collection of information is necessary to provide educational, vocational, psychological, employment, and personal adjustment counseling that are part of the chapter 31 program.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8015 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16780 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0029.

Titles and Form Numbers:

a. Offer to Purchase and Contract of Sale, VA Form 26–6705

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b

c. Addendum to VA Form 26–6705, VA Form 26–6705c

d. Addendum to VA Form 26–6705 (Virginial), VA Form 26–6705d

Type of Review: Revision of a currently approved collection.

Needs and Uses:

a. VA Form 26–6705 is used by the private sector sales broker to submit an offer to the VA on behalf of a prospective purchaser of a VA-acquired property. The form will be prepared for each proposed contract submitted to the VA. If the VA accepts the offer to purchase, it then becomes a contract of sale. The form defines the terms of sale, provides the prospective purchaser with a receipt for his/her earnest money deposit, eliminates the need for separate transmittal of a purchase offer and develops the contract without such intermediate processing steps and furnishes evidence of the station decision with respect to the acceptance of the contract as tendered. Without this information, a determination of the best offer for a property cannot be made.

b. VA Form 26–6705b is used as a credit application to determine the creditworthiness of a prospective purchaser in those instances when the prospective purchaser seeks the VA vendee financing, along with VA Form 26–6705. In such sales, the offer to purchase will not be accepted until the purchaser's income and credit history have been verified and a loan analysis has been completed, indicating loan approval. Without this information, the creditworthiness of a prospective purchaser cannot be determined and the offer to purchase cannot be accepted.

c. VA Form 26–6705c, using the "highest net return/cash equivalent value" (EWCEV) procedure, is intended to simplify the selection process among competing offers and ensure that the offer selected provides the greatest value to the VA. The procedure requires one or more calculations on each offer in order to convert it to a "net to VA" basis which can easily be compared to other offers, and thus enable the VA to be sure that the highest real dollar offer is accepted. The sole purpose of the HNR/CEV is to determine which offer is the most financially advantageous to the VA and in turn, the taxpayers. This procedure is very similar to the calculation prepared on most private sector transactions in order to show the seller what he or she will receive as proceeds of sale.

d. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in Virginia. It includes requirements of State law which must be acknowledged by the purchaser at or prior to closing.

Current Actions: Under the authority of Title 38 U.S.C 3720(a) (5) and (6), VA acquires properties for sale to the general public utilizing the services of private real estate brokers.

Affected Public: Individuals or households.

Estimated Annual Burden: 64,583 hours.

a. VA Form 26–7605—33,333 hours.

b. VA Form 26–6705b—33,500 hours.

c. VA Form 26–6705c—8,333 hours.

d. VA Form 26–6705d—417 hours.

Estimated Average Burden Per Respondent: 14 minutes (average).

a. VA Form 26–7605—20 minutes.

b. VA Form 26–6705b—20 minutes.

c. VA Form 26–6705c—5 minutes.

d. VA Form 26–6705d—5 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Total Respondents: 272,500.

a. VA Form 26–7605—100,000.

b. VA Form 26–6705b—67,500.

c. VA Form 26–6705c—100,000.

d. VA Form 26–6705d—5,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16781 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0171.

Title and Form Number: Application and Enrollment Certification for Individualized Tutorial Assistance, VA Form 22–1990t.

Type of Review: Extension of a currently approved collection.

Need and Uses: The VA uses the information collected to determine eligibility for tutorial assistance. The form is sent by the applicant to the school for certification and transmission to the VA. The school will transmit the form to the appropriate VA regional office (i.e., Atlanta, Buffalo, Muskogee, or St. Louis) with jurisdiction over the area where the school is located. Without the information on this form, the VA would be unable to determine the applicant's eligibility for tutorial assistance.

Current Actions: The VA is authorized to pay tutorial assistance under 38 U.S.C. chapters 30, 32 and 35, and under 10 U.S.C. chapter 1606. Tutorial assistance is a supplementary allowance payable on a monthly basis for up to 12 months. The student must be training at one-half time or more in a post-secondary degree program, and must have a deficiency in a unit course or subject that is required as part of, or prerequisite to, his or her approved program. The student uses VA Form 22–1990t, Application and Enrollment Certification for Individualized Tutorial Assistance, to apply for the supplemental allowance. On the form the student provides information such as: name; Social Security Number; mailing address; telephone number; program and enrollment information; the course or courses for which he or she requires tutoring, the name of the tutor; and the date, number of hours and charges for each tutorial session. The tutor must verify that he or she provided the tutoring at the specified charges, and that he or she is not a close relative of the student. The Certifying Official at the student's school must verify that the tutoring was necessary for student's pursuit of a program, that the tutor was qualified, and that the charges for the tutoring did not exceed the customary charges for other students.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16782 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the National Cemetery System (NCS) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Frances Wills, National Cemetery System (402D2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the NCS request for Office of Management and Budget (OMB) approval. In this document the NCS is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0365.

Title and Form Number: Request for Disinterment, VA Form 40–4970.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to allow a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. The information is used for approving or disapproving the disinterment request.

Current Actions: Interments made in national cemeteries are permanent and final. Disinterments will be permitted for cogent reasons, and then with prior written authorization only, usually by the Cemetery Director. Approval can be made when all immediate family members of the decedent, which includes the person who initiated the interment (whether or not he/she is a member of the immediate family), give their written consent. (Next-of-kin are generally initiators of disinterment requests.) An order from a court of local jurisdiction can be accepted in lieu of submitting VA form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency On occasion.

Estimated Number of Respondents: 197.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.
By direction of the Secretary.
William T. Morgan,
Management Analyst.
[FR Doc. 96–16783 Filed 7–1–96; 8:45 am]
BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0242.

Title and Form Number: Water-Plumbing Systems Inspection Report (Manufactured Home), VA Form 26–8731a.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced plumbers or manufactured home service personnel. VA Form 26–8731a will be completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory water and plumbing systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.
By direction of the Secretary.
William T. Morgan,
Management Analyst.
[FR Doc. 96–16784 Filed 7–1–96; 8:45 am]
BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0243.

Title and Form Number: Fuel and Heating Systems Inspection Report (Manufactured Home), VA Form 26–8731c.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced heating company personnel, or manufactured home service personnel. VA Form 26–8731c is completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory fuel and heating systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 400.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. (202) 273–8015.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.
By direction of the Secretary.
William T. Morgan,
Management Analyst.
[FR Doc. 96–16775 Filed 7–01–96; 8:45 am]
BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0162.

Title and Form Number: Monthly Certification of Flight Training, VA Form 22–6553c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by students (veterans, servicemembers and reservists) and flight schools to report the hours and costs of flight training received and the termination of training.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 6,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan

Management Analyst.

[FR Doc. 96–16776 Filed 7–01–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0459.

Title and Form Number: Property Management Consolidated Invoice, VA Form 26–8974.

Type of Review: Extension of a currently approved collection.

Need and Uses: VA Form 26–8974 is generated monthly by the computerized Property Management System at the VA Automation Center, Austin, Texas. Invoices show assigned properties with the assigned numerical identification and property location for each. Fixed fees, as applicable, are computer-entered for each property for certain management services, such as monthly inspection. The invoice is sent to the broker from Austin on or about the 25th day of each month. The broker then enters any additional charges for each property, affixes supporting documentation for reimbursement of expenses claimed, such as for utilities, and mails the invoice to the VA regional office of jurisdiction. Invoices are then reviewed by Realty Specialists to verify accuracy of charges, and forwarded to the Finance activity for audit and payment.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 32,215 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 1,895.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16777 Filed 7–01–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel, Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0018.

Title and Form Number: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses:

VA Form 21 will be used to obtain basic information necessary to determine whether an individual may be accredited as a service organization representative for purposes of representation of claimants before the VA. The information will be used by VA to evaluate qualifications, ensure against conflicts of interest, and allow appropriate organization officials to certify the character and qualifications of applicants.

VA Form 22a will be used by a claimant for VA benefits to confer power of attorney upon an attorney or agent in order that the attorney or agent may represent the claimant in proceedings before the VA. The information is necessary for determining whether access to claimant records may be provided and for notification purposes.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be

directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16778 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None Assigned.

Title and Form Number: Survey of Health Promotion and Preventative Medicine, VA Form 10–21000(NR)

Type of Review: New collection.

Need and Uses: Congressional mandate that the VA assess the rates that veterans are offered and receive critical health promotion and disease prevention services, and report these rates to Congress on an annual basis, Public Law 102–585. Existing data resources in the VA are unable to provide complete documentation regarding receipt of those services. An annual mail survey will be used to obtain the necessary information.

Affected Public: Individuals and households.

Estimated Annual Burden: 5,777 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 51,900.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary:

William T. Morgan,

Management Analyst.

[FR Doc. 96–16785 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0118.

Title and Form Number: Veterans Benefits, Veterans Education, Education or Training, VA Form Letter 22–315

Type of Review: Extension of a currently approved collection.

Need and Uses: The information is used to determine whether a claimant is eligible for payment for training at an institution other than the institution which will grant a degree or certificate upon completion of training. Without the information, benefits cannot be authorized for any courses pursued at other than the primary institution.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 207 hours.

Estimated Average Burden Per Respondent: 7½ minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,244.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16786 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

federal register

Tuesday
July 2, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1, et al.

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 91, 121, 125, 135, 141, 142

[Docket No. 26933; Amendment No. 1–45, 61–100, 91–251, 121–259, 125–27, 135–63, 141–7, 142; SFAR–58–2]

RIN 2120–AA83

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements new regulations that contain certification and operating rules for training centers that will use aircraft flight simulators and flight training devices for pilot training, testing, and checking. This rule will increase the use of flight simulators and flight training devices by permitting their use for most airman certification training, testing, and checking tasks. This use of simulation for training, testing, and checking is more liberal than that currently permitted under the Federal Aviation Regulations. The training center concept will provide a common source for standardized, quality training accessible to any individual or corporate operator and air carriers. This action is consistent with a state-of-the-art training concept and recognizes industry recommendations for the expanded use of sophisticated flight simulation. The new rule also adds regulations regarding Category III instrument landing system operations.

EFFECTIVE DATE: This final rule is effective August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Warren Robbins, Airman Certification Branch, (AFS–840), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–8196.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this final rule.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

Flight simulation technology has shown enormous advancement during the past 30 years. The Federal Aviation Administration (FAA) has permitted greater use of aircraft flight simulators and flight training devices in training, testing, and checking airmen. The increased complexity and operating costs of the modern turbine-powered aircraft and the current operating environment have created an even greater need for the use of flight simulators and flight training devices. In many cases, flight simulators have proven to provide more in-depth training than can be accomplished in the aircraft. The use of flight simulators and flight training devices in lieu of aircraft has resulted in a reduction in air traffic congestion, noise and air pollution, and training costs. The increased use of flight simulators is also consistent with the national policy for fuel conservation.

Flight simulators provide a safe flight training environment. They may reduce the number of training accidents by allowing training for emergency situations, such as fire, total loss of thrust, and systems failures, that cannot be safely conducted in flight. The FAA has traditionally recognized the value of flight simulation and has awarded credit for the completion of certain required training, testing, and checking by use of simulation.

The first aircraft flight simulators approved by the FAA were relatively unsophisticated and were authorized for only a limited number of maneuvers and procedures. As flight simulator technology developed, the FAA expanded the use of flight simulators but still required students to perform a number of maneuvers in an aircraft. Among these were takeoffs, landings, taxiing, and some approaches.

In Amendment No. 121–55 (35 FR 84; January 3, 1970), the FAA revised parts 61 and 121 to authorize the use of flight simulators and flight training devices for airman training, testing, and checking. This use applied only to part 121 air carriers.

In Amendment No. 61–60 (38 FR 3156; February 1, 1973), the FAA authorized the § 61.58 proficiency check for the pilot of an aircraft requiring more than one pilot to be accomplished in its entirety either in an airplane or in a flight simulator or flight training device. In alternating 12-month periods, the proficiency check consists of maneuvers and procedures that may be performed in a flight simulator or flight training device as set forth in appendix F of part 121.

Subsequently, the FAA issued Amendments 61–62 and 121–108 (38 FR 35443; December 28, 1973), effective December 19, 1973. These amendments, in part, revised parts 61 and 121 by authorizing certain maneuvers and procedures of the pilot-in-command proficiency check to be performed in an approved visual flight simulator, if the pilot being checked accomplished two landings in an airplane of the same type.

The FAA issued Amendments 61–69 and 121–161 (45 FR 44176; June 30, 1980), effective July 30, 1980, that further expanded the use of advanced flight simulators for air carriers. Amendments 61–69 and 121–161 formed the basis of the Advanced Simulation Plan, which included Phase I, II, IIA, and III flight simulators (part 121, appendix H).

Since the infancy of simulation training, the training roles of several elements of the aviation community have expanded, most notably those of part 121 and part 135 certificate holders providing training for other certificate holders. Also, aircraft manufacturers are providing more simulation training now than they did in the past. This expansion has led to an ever-increasing need to issue exemptions.

In June 1988, the FAA received from a joint industry/FAA task force [1] several recommendations on the expanded use of flight simulators in new and innovative training programs. The recommendations included (1) Establishing a training center certificate for a separate training entity certificated to conduct training, testing, and checking under 14 Code of Federal Aviation Regulations parts 61, 63, 91, 121, 125, 135, and 141; (2) centralizing an approval process for course programs and check airmen at the national level, with local approvals only for specialty (local or unique) courses; and (3) expanding and standardizing the use of flight simulators and flight training devices, while at the same time providing relief from certain provisions of part 121, appendix H. The task force recommended single point oversight of a certificate by the FAA (instead of separate Flight Standards District Offices (FSDO's) approving centers in

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990. Today it continues to function as an issues area by the same name under the Aviation Rulemaking Advisory Committee.

their geographic areas), defining training center recordkeeping requirements, and providing relief from the medical certificate requirements for instructors and check airmen conducting training in only flight simulators and flight training devices. The task force submitted aircraft manufacturer recommendations as an addendum recommending that a manufacturer's training center provide the initial operating experience (IOE) for air carriers.

In April 1989, this task force examined the role of training centers that provide training, testing, and checking for air carrier and general aviation pursuant to contracts, particularly training using flight simulators and flight training devices. This task force, which was comprised of aviation representatives from special interest groups, aircraft manufacturers, air carriers, university flight departments, and training centers such as SimuFlite, FlightSafety International, and Northwest Aerospace Training Corporation, examined flight simulation instructor and evaluator issues, including prerequisites; initial and recurrent training; requirements for current medical certificates; necessary in-flight experience; training center issues such as recordkeeping, facilities, and equipment; and the training program approval process.

The formal recommendations of this task force were forwarded to the FAA in October 1989. Essentially, the task force recommended that the FAA standardize the use of flight simulators and flight training devices, provide a means to certificate entities called training centers, and permit the training centers to apply for national approval of core curriculums that could be used by individuals receiving training under parts 61, 121, 125, and 135. Following receipt of the recommendations, the FAA appointed an internal working group to consider the recommendations.

The FAA working group concurred with most of the recommendations of the task force and recommended that the FAA undertake a rulemaking project that would include the concept of a certificated training center.

Related Activity

Several other FAA rulemaking projects address some of the same sections of 14 Code of Federal Regulations (14 CFR) that are revised in this rule; however, this rulemaking addresses those sections as they relate to the use of simulation.

Special Federal Aviation Regulation (SFAR) No. 58, "Advanced Qualification Program," (Amendment 61–88, effective October 2, 1990, 55 FR 40262) allows air carriers conducting training and testing under part 121 or part 135 to develop innovative approaches to training. Most AQP training programs will involve the use of simulation.

Three projects, listed below, are final rules that the FAA expects to issue soon:

"Pilot, Flight Instructor, Ground Instructor, and Pilot Certification Rules," proposed on August 11, 1995 [60 FR 41160], revises parts 61, 141, and 143.

"Training and Qualifications Requirements for Check Airmen and Flight Instructors," proposed on February 22, 1996 [61 FR 6898], changes certain provisions of §§ 121.411, 121.413, 135.337, and 135.339.

"Part 121; Appendix H, Advanced Simulation Plan Revisions," proposed on February 14, 1995 [60 FR 8490], updates and revises appendix H of part 121.

Discussion of the Amendments and the New Rule

General

This final rule addresses the following: (1) The creation of a new part 142 that contains certification rules and operating rules for training centers; (2) an expanded use of, and credit for, training, testing, and checking conducted in flight simulators and flight training devices in accordance with approved programs conducted at training centers to satisfy all or some of the requirements of SFAR 58, part 61, part 121, part 125, or part 135; and (3) new rules pertaining to Category III authorizations.

The advantage of the training center concept is that it is a common source for standardized, quality training, testing, and checking accessible to any individual, operator, and air carriers. Program approval will be standardized through national guidance, which should prove especially helpful for training centers operating in different FAA regions. The rules applicable to training centers apply nationwide, and training programs, except specialty training courses, are subject to approval by local FAA offices only after detailed review for compliance with national guidance. A key concept in the proposal is standardization of certain elements of training programs, notably: the extent of the use of simulation, the prerequisites for the use of simulation for specific tasks, and simulation instructor and evaluator qualifications.

The FAA proposed a national office to ensure standardization in simulation training. Several commenters supported the proposal to create a national office for standardization purposes. The FAA has decided not to create a national office at this time, however. In the present economic environment, government is increasingly exploring alternative methods of accomplishing many of its missions. Additionally, the FAA subscribes to the concept of decentralization of government to make it more responsive to the users, and accomplishing the objectives of this rulemaking without a national office is consistent with the precept of government decentralization. The FAA is convinced that it can attain and maintain the concept of standardization of simulation training by means more economical than creating a national office.

Detailed guidance will be provided to FAA inspectors and potential training center certificate applicants in the form of handbooks, advisory circulars, and FAA orders. The Flight Standards Service will appoint an ad hoc group of several persons from within existing resources with experience in subjects related to simulation training centers. The ad hoc group will process the initial certificate applications, training specifications, and curriculum approvals. It will ensure that those approvals are standardized nationally and that they represent a smooth transition of existing training programs to the new training regulations.

The Flight Standards Service also will train all its inspectors on features of part 142 training centers. It will provide detailed training to those inspectors who will have training center oversight responsibilities and to Principal Operations Inspectors (POI's) of air carrier certificate holders that may use a training center.

After the steps outlined above are accomplished and the initial workload of certificate applications is completed, the ad hoc group will be dissolved, and approval of training center certificate applications and oversight of training centers will be decentralized in accordance with existing FAA structure and management practices.

This rule does not take away any of the uses for flight training devices currently allowed by 14 CFR, and will have no adverse impact on the airmen who use flight simulation. Providers of flight simulation training, testing, and checking under part 142 will come under new regulatory controls that will enhance the use of qualified flight simulation in approved training programs. The changes are consistent with a state-of-the-art training concept, and they recognize industry

recommendations for the expanded use of sophisticated flight simulation. The FAA has determined that, if a student has prerequisite experience, a qualified flight simulator or flight training device used in an approved training program will provide for an effective transfer of skills to the actual aircraft.

In this rule, the FAA implements the joint industry/FAA task force recommendations concerning training centers by using an operational concept that requires a training center to obtain a certificate plus a training specification (similar to an operating specification for part 121 and part 135 operators). This approach will add flexibility to accommodate changing conditions without changing the certificate itself.

Part 142 allows training centers that do not hold a part 121 or part 135 operating certificate to use approved flight simulators and approved flight training devices for airman training, testing, and checking. This rule also changes certain sections of parts 61, 121, 125, and 135 to provide a mechanism for crediting training, testing, and checking in flight simulators toward some of the aeronautical experience, testing, and checking requirements of 14 CFR. Part 121 and part 135 certificate holders will continue to train personnel under those parts; however, those certificate holders will be required to acquire a part 142 training certificate in order to conduct training, testing, and checking for persons not subject to those parts.

The authority to issue pilot certificates and the provisions permitting certain training, testing, and checking in a flight simulator or flight training device, rather than in an aircraft, remains in part 61.

Part 142 regulates training center certification and operation to ensure that qualified flight simulators or flight training devices are used in conjunction with approved courses and curricula. The benefits of completing a course of standardized instruction in a structured training environment, and in a timeframe that allows for a building-block approach to learning, has been recognized and is reflected in the part 141 flight experience prerequisites for pilot certificates. Thus, part 141 flight experience requirements were used as the basis for many of the part 142 initial requirements.

Part 141 Pilot Schools

Pilot schools certificated under part 141 may continue to operate as they do now. Certification of new pilot schools will also continue under part 141. A part 141 pilot school wishing to use a Level A through Level D flight simulator for more than the hours currently allowed in a pilot ground trainer as described in § 141.41(a)(1), however, will have to become certificated under part 142. (See Advisory Circular (AC) 120–40, Airplane Simulator Qualification, as amended, for the current descriptions of levels of flight simulators).

This rule does not include an increase in credits for use of simulators except in the structured environment created by part 142, or as may be individually approved for an air carrier. Part 141 pilot schools that desire to undertake training by use of more sophisticated simulation, in addition to training accomplished by aircraft and flight training devices, may become training centers certificated under part 142. They would apply for certification and course approval under part 142 in the same manner as other applicants.

Advanced Qualification Program (AQP)

This final rule has minimal impact on AQP. It provides the administrative structure for presentation of AQP to any group other than aircrews subject to a part 121 or part 135 approved training program who might receive the AQP training exclusively from their employing certificate holder. All AQP approval criteria, application procedures, instructor qualifications, recordkeeping, and data collection procedures, among others, remain as they are described in SFAR 58 or its superseding rules.

This final rule changes the definition of a training center that appears in SFAR 58 to make it compatible with that term as used in part 142; provides that trainers other than part 121 or part 135 certificate holders presenting an approved AQP to their aircrew employees will have to do so under a part 142 certificate; and allows persons other than part 121 or part 135 certificate holders to present training under AQP if that training is approved in accordance with SFAR 58.

Specific relationships between training center certificate holders and holders of AQP authorizations, and of training center certificate holders who become holders of AQP authorizations, are discussed in the section of this document entitled "Section-by-Section Summary of the Comments" which follows.

Terms

In response to comments, the FAA has either added or revised terms to expand and clarify the final rule. Each modification of a term or word is discussed in the "Section-by-Section Summary of the Comments." A summary of the important new terms and words is provided below.

Flight Simulator

Section 61.2 defines a flight simulator. In the past, the terms "simulator" and "training device" have created confusion, so they are more clearly defined under this section. As defined, the terms make clear those devices that are not considered a flight simulator or a flight training device for purposes of this part.

In this final rule, a flight simulator is defined as a full-sized replica of a specific type or make, model, and series aircraft cockpit, including the equipment and programs necessary to represent the aircraft in ground and flight operations. As defined, a flight simulator also includes a force cueing (motion) system providing cues at least equivalent to a three-degree of freedom motion system. A flight simulator is a device that is approved by the Administrator for uses that may lead to credit for aeronautical experience, required training, testing, or checking.

Devices such as airborne ILS simulators, ground trainers, instrument trainers, and flight trainers are not considered flight simulators or flight training devices under this part unless specifically evaluated and approved as such by the Administrator.

Flight Training Device

In several sections in this rule, flight training devices are listed with aircraft and flight simulators as permitted flight training equipment for various training, testing, or checking tasks of pilots, although no flight training device may exist for some tasks. The FAA intends to allow the possibility of approving flight training devices for training, testing, and checking a wide variety of tasks to allow and encourage the development of flight training devices in the future. By permitting the possibility of a wide variety of uses for flight training devices, which are generally less expensive than flight simulators, the FAA hopes to encourage the growth of simulation.

Section 61.2 defines a flight training device as a replica of an aircraft's instruments, equipment, panels, and controls that is located in an open flight deck area or in an enclosed aircraft cockpit. This definition includes the equipment and programs necessary to represent the aircraft in ground operations and flight conditions. As defined, a flight training device is not required to have a force cueing or visual system. However, like a flight simulator, a flight training device is a device that requires approval by the Administrator

for all uses that may lead to credit for aeronautical experience, required training, testing, and checking.

Category III Operations

This rule recognizes that technological advances permit aircraft operated under part 91 to conduct Category III extreme reduced visibility landing approaches. Part 91, specifically § 91.191 and 91.205, proposed to include implementing requirements to conduct Category III operations. Part 61 has been amended to specify the training and testing requirements for Category III operations. Part 1, § 1.1, Category III approaches.

Simulated Instrument Flight Rules (IFR) Conditions

Some airmen have expressed concern about the meaning of the terms "simulated IFR conditions" or "simulated instrument conditions" in part 61. There appears to be confusion over whether these conditions can be achieved by the use of hood devices only. These terms are used throughout the 14 CFR to mean that instrument conditions may be simulated by artificially limiting pilot visibility outside the cockpit. Pilot visibility can be limited by a hood device, by artificially limiting visibility in an approved flight simulator or flight training device, or by other appropriate means. Section 61.45 permits the artificial limitation of visibility by these various means.

Tests and Checks

Generally, this rule uses the word "test" in lieu of the word "check." Specifically, this rule uses the terms "initial test," "recurrent test," and "practical test." These terms refer to an examination, whatever its nature, on which the applicant receives a grade, even though the grade may be only "pass" or "fail."

An exception is found in § 61.58 that requires a "proficiency check" for a pilot in command (PIC) of an aircraft. A "proficiency check" is one type of periodic review of a pilot's proficiency as a PIC, whereas an initial test determines that pilot's qualification to be a pilot. Thus, when referring to this type of requirement, the FAA believes that the word "check" is more appropriate.

Aircraft

Prior to this rule, the only flight simulators referred to in the regulations were airplane simulators. The word "aircraft" is used throughout this rule, however, to indicate that the rule applies to training, testing, and checking in helicopters as well as in airplanes. When a requirement is meant to apply to only a particular category or class of aircraft, the appropriate category or class, such as "airplane," "rotorcraft," or "helicopter," is specified.

Normal Landings and Normal Takeoffs

The terms "normal landing" and "normal takeoff" are used in several places in the new or amended sections of part 61. "Normal" is meant to describe maneuvers that are not emergency maneuvers or those that are not done under abnormal conditions. A "normal" takeoff or landing includes those: (1) With different flight path angles, from steep to shallow; (2) with different configurations, such as flaps down or up; (3) to or from different surfaces, such as sod, concrete, and wet or slushy surfaces, or (4) made under various other circumstances that may be described in an aircraft flight manual. An emergency takeoff or landing is not a "normal" takeoff or landing. A takeoff or landing is not "normal" if it is labeled "abnormal" by the aircraft flight manual.

Easily Reached Controls

There has been some question about the meaning of the term "easily reached and operable in a normal manner" which appeared in § 61.45. This term, as amended, means that controls that are "easily reached" are those that can be reached by any airman or applicant seated in a designated pilot seat, with seat belts, shoulder harness, or other provided restraints fastened.

Conventional Manner

This rule also changes the term "normal manner," as it refers to the operation of an aircraft, to "conventional manner" and defines this term. This new definition should eliminate potential confusion associated with the use of such terms as "normal," "abnormal," or "emergency" performance. These different terms appear in many aircraft flight manuals and training curriculums. As used in this rule, in order to perform a normal, abnormal, or emergency maneuver in a "conventional manner," an applicant must use an aircraft that is equipped with one of the following: (1) A control wheel, stick, yoke, or cyclic control that in cruise flight, and in a forward movement, causes a decrease in pitch attitude, and rearward pressure causes an increase in pitch attitude; a left movement causes a bank to the left, and a movement to the right causes a bank to the right; and (2) rudder pedals or antitorque pedals which, when depressing the left pedal, cause the aircraft nose to yaw left and, when depressing the right pedal, cause the nose to yaw right. Aircraft with controls that operate differently than described above may still be used for a practical test, if the examiner determines that the flight test can be conducted safely in the aircraft.

Training Center

The characteristics of a training center are addressed in section 2 of SFAR 58 and several sections of part 142. Generally, it is defined as an entity that must hold an air agency certificate issued under part 142 and must comply with all applicable sections of part 142. It should be noted that whenever the term training center appears in this rule it includes satellite training center.

Supervised Operating Experience

Supervised operating experience (SOE) is experience required to remove certain limitations from an airman's certificate. The limitation that may be removed by SOE is a limitation on PIC privileges for a specified aircraft type issued to certain less-experienced pilots who use high level simulation only for all training and testing for a certificate, an added rating, or a certificate with an added rating. The required SOE must be accomplished by serving as PIC under the supervision of a qualified and current PIC in the airplane type to which the limitation applies. The SOE must be performed in the seat normally available to the PIC. The limitation may be removed by presenting evidence of the SOE to any FSDO. SOE parallels the operating experience requirement long a feature of air carrier training and qualification programs, but is less burdensome in that a current and qualified PIC instead of a check airman may provide the supervision. More detailed discussion on this matter follows in the response to comments about §§ 61.64 and 61.158.

Summary of Comments

Notice 92–10 was published in the **Federal Register** on August 11, 1992 (57 FR 35888). The comment period closed on December 9, 1992. The FAA received 328 comments in response to Notice No. 92–10: 223 comments from various sectors of the interested public, namely pilots and certificated flight instructors; 48 comments from various aviation businesses; 13 comments from the major aviation associations; 11 comments from commercial air carriers; 11 comments from the aviation/academic training school community; and 4 comments from governmental organizations. Eighteen miscellaneous comments were either duplicates or entered to this

docket in error. The FAA considered all of the comments, even those received after the comment period closed.

Of the 328 comments received, 278 comments made reference to proposals contained in § 61.197 which addresses renewal of flight instructor certificates. (Of these 278 comments, 216 comments referenced only § 61.197, 62 referenced § 61.197 among other sections.) These comments, as well as those relating to §§ 61.187, 142.49, and 142.53 concerning instructor flight proficiency, training center instructor privileges and limitations, and training and testing requirements, were addressed in Notice No. 92–10A, a Supplemental Notice of Proposed Rulemaking (SNPRM) published in the **Federal Register** on February 19, 1993 [58 FR 9514]. The remaining 50 commenters expressed both support and opposition to the proposals. Many of these commenters supported the NPRM in concept and purpose, and made various recommendations for textual revisions. Other commenters made recommendations with no statement of strong support or opposition to the proposals. For purposes of discussion, the comments have been grouped into several broad categories and are discussed in further detail below. Each comment is discussed in the section of this document entitled "Section-by-Section Analysis of the Comments."

General Issues Covered in the Comments

The following subjects received the most comments. These comments are responded to individually in a separate section of this document to follow entitled "Section-by-Section Summary of the Comments." The issues raised and the nature of the comments are summarized below:

1. The proposed definitions and guidelines regarding the use of flight simulators and flight training devices will ensure standardization of training.

Approximately 15 commenters supported the standardization of training offered by new part 142. Several of the commenters, including Simulator Training, Inc., (STI) and the Aircraft Owners and Pilots Association (AOPA), suggested that part 142 define and standardize training center operations, and reduce the number of exemptions required for the use of simulation. Additionally, the Air Line Pilots Association (ALPA) supported the standardized certification requirements proposed by part 142. ALPA stated that the certification process "will assure some level of minimum performance for these training centers, require accountability for training programs and equipment, and provide more consistent FAA oversight."

Northwest Airlines, Inc., (NWA) stated that "the proliferation of programs has reached a level where increased regulatory controls must be imposed." NWA and other commenters, including FlightSafety International (FSI), strongly supported the proposal of an FAA part 142 national office. These commenters suggested that the establishment of centralized resources would help to promote standardization and consistency in training and evaluation.

2. The requirements for obtaining a part 142 certificate are burdensome, costly, and over restrictive.

Approximately 30 commenters objected to various proposals for the part 142 certification process. The majority of these commenters specifically cited proposed §§ 142.17(b)(3) and 142.17(d), suggesting that they are unnecessarily burdensome and costly.

Fifteen commenters, primarily pilot schools, opposed the proposal that the principal business office of a part 142 certificate holder cannot be shared with another certificate holder. The commenters see this proposed restriction as imposing costly and unnecessary administrative duplication. Various commenters indicated that the requirement that a training center own or lease at least one FAA-approved flight simulator would exclude many smaller training institutions from the benefits of part 142 participation due to costs and thereby preclude some students from receiving the benefits of advanced simulation training. In addition, several commenting part 121 certificate holders stated that if part 121 certificate holders are required to apply for a separate certificate under part 142, they would be required to purchase duplicate flight training equipment and facilities. They stated further that part 142 certificate holders would be precluded from leasing "dry" simulator time from part 121 certificate holders possessing such training equipment.

3. A part 142 certificate should not be required to continue to provide training to employees of other part 121 or part 135 certificate holders.

Several commenters opposed the proposals which would require training entities providing currently approved training programs to be certificated under part 142. These commenters represented a diverse group that included air carrier certificate holders, persons interested in AQP, and current simulator exemption holders.

4. Flight experience gained from the use of simulation cannot fully replace the operational experience gained in the actual flight environment.

Several commenters, namely some individuals and the National Transportation Safety Board (NTSB), expressed concern regarding the reduced hours of actual flight experience proposed in various sections of the NPRM and posited that flight experience gained through the use of flight simulation cannot fully replace the operational experience gained in the actual flight environment.

Section-by-Section Analysis of the Comments

NWA suggested that some readers may have been confused by the structure of the NPRM, in that it set forth the proposed text, but did not show the text that remained unchanged. Asterisks were used to designate the text which the FAA proposed to leave unchanged. The use of asterisks for this purpose is consistent with the Federal Register's *Document Drafting Handbook.*

Several commenters said that several of the proposals should be deleted in this rulemaking and considered in the part 61, 141, and 143 review. The FAA carefully considered which topics to include in this rulemaking and which to include in the part 61, 141, and 143 review. Generally, if a topic relates to simulation, it was addressed in the NPRM for this rulemaking. Some other part 61 topics also are addressed in this rulemaking if it was necessary to revise the section for consistency of style and paragraph numbering.

SFAR 58

SFAR 58.2 *Definitions.* The FAA proposed in Notice 92–10 to make the definition of training centers in this section compatible with the definition of that term as contained in § 142.3.

Several commenters expressed the belief that the proposed definition was confusing or ambiguous. The FAA agrees that the definition should be more clear and has simplified the definition. The revised definition includes those persons who obtain, and operate under, a part 142 certificate, and those part 121 and part 135 certificate holders who present, under AQP, training that they are required to present under part 121 or part 135.

Other commenters suggested rewording the definition to exclude those training providers who already hold a part 121 or part 135 certificate, or those persons who might provide AQP training for those certificate holders. This is an issue of the applicability of part 142, which is discussed in the section-by-section

analysis of § 142.1 and further defined in § 142.3.

SFAR 58.11. Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement.

Delta Air Lines, Inc., (Delta) in a comment typical of several others, said that there appears to be no sound reason to change the existing SFAR 58 provision for approval of AQP training, qualification, or evaluation to be offered by a part 142 training center. It went on to say that approval under SFAR 58 of training programs, instructor or evaluator qualification, and use of training equipment should constitute approval under part 142.

The FAA agrees. The FAA had that intent when making the original proposals. For example, in the NPRM preamble discussion of § 142.39, the FAA stated:

"The FAA believes that approval of a curriculum under SFAR 58, Advanced Qualification Program (AQP), should, for that applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in proposed §§ 142.39 and 142.77."

Several air carriers asked why the FAA proposed in this rulemaking to fix an expiration date for SFAR 58.

SFAR 58 may or may not expire as determined by separate rulemaking action underway at this time. Under this final rule, a part 121 certificate holder with an AQP authorization may continue, without certification under part 142, to train persons who are aircrew employees of another certificate holder who has an AQP authorization.

Minor editorial changes have been made to clarify the intent of the proposed rule. This section is adopted with the revisions discussed above.

Part 61

§ 61.1a (adopted as § 61.2) *Definition of terms.* This section has been amended to include definitions for terms used in part 61. The following terms are defined:

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under SFAR 58, part 121, part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) "Flight Simulator, Airplane" means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) "Flight Simulator, Helicopter" means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) "Flight Training Device" means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Does not require a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) "Set of airplanes or rotorcraft" means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion system or systems.

Aerospace Industries Association (AIA) and Boeing Commercial Airplane Group (Boeing), in identical comments, stated that this part should not have new definitions for flight simulators and flight training devices, but should instead incorporate by reference the definitions for these items as contained in Advisory Circular (AC) 120–40B and AC 120–45A.

The definitions of "flight simulator" and "flight training device" set forth in new part 142 are, in all aspects, identical to those contained in the referenced AC's. The FAA has determined that the definitions should be contained in the regulatory text so that they are readily available to applicants for, and holders of, a part 142 certificate and other persons who have an interest in the regulations concerning training centers.

Crew Systems, Andrews University, and an individual stated that definitions should not be in this section, but rather in part 1 of 14 CFR, and that the proposed definitions might have a different meaning to different people. The definitions contained in part 61 are applicable to that part of 14 CFR. Some of the words or terms might have a different definition in the context of a different part of 14 CFR. Only those definitions that have general applicability to all parts of 14 CFR are placed in part 1.

Airbus Service Company, Inc., (Airbus) recommended that this section be amended to include Air Transportation Ground Instructor, Air Transportation Flight Instructor, and Air Transportation Flight Instructor (Simulator Only) in the definition of authorized instructor.

The authority of the persons cited by Airbus to function as instructors is limited to service in part 121 or part 135. The persons with the instructor titles cited by Airbus are not necessarily holders of an FAA flight instructor certificate, and may perform certain flight instructor functions by virtue of holding an airline transport pilot (ATP) certificate. The privileges of persons cited by Airbus are not changed by this definition; they remain the same for the operating part for which the person was designated. Additionally, many of the persons cited by Airbus could qualify as an authorized instructor in other parts, including part 142. See the provision of § 61.2 (a)(2) as adopted.

One person stated that including the words "full-sized replica" in the definition of a flight training device precludes the approval of personal computer flight simulation technology.

The comment is accurate. The FAA is convinced that simulation has benefit only if behaviors learned can be transferred to the aircraft. The FAA is convinced that no effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft. As discussed in the NPRM, AC 120–45, as amended, describes the minimum criteria for flight training devices which will result in

replication of aircraft performance suitable for specific training, testing, and checking. The FAA has under development a new AC 120–46, "Use of Airplane Flight Training Devices (In Flight Training and Checking for Airman Qualification and Certification)," which will provide details about which tasks a particular level of flight training device may be used for training credit and which tasks one may be used for testing. At this time, no flight training aid based on what is commonly known as "personal computers" meets the criteria of AC 120–45. Accordingly, the use of personal computer flight simulation technology is considered unacceptable.

One commenter stated that this section, and all other proposed revised sections of part 61, should be deleted and considered in the phase II of the part 61, 141, and 143 review, which was referenced earlier as a related rulemaking project.

The FAA does not agree that this would be an appropriate action. The purpose of this rulemaking was to undertake a comprehensive review, and revision if necessary, of all rules with the potential for increasing the use of simulation for airman training, testing, and checking. Many of these rules are contained in part 61; therefore, the FAA proposed revisions to certain sections contained in that part.

§ 61.2 (adopted as § 61.3) Certification of foreign pilots and flight instructors.

This section proposed rules for training centers and their satellite training centers for issuing certificates and ratings outside the United States. Specifically, this section proposed that training centers, and their satellite training centers, certificated under part 142 of this chapter, be allowed to do the following outside the United States: (1) Add additional ratings and endorsements to certificates issued by the Administrator under the provisions of part 142; and (2) issue certificates to U.S. citizens within the authority granted to the training center by the Administrator.

The National Association of Flight Instructors (NAFI) commented that it has long been an FAA policy to not issue U.S. certificates or additional ratings to foreign nationals outside the United States.

The FAA agrees with the commenter that, under § proposed 61.2 (adopted as § 61.3), the FAA does not issue U.S. certificates to foreign nationals outside the United States unless issuance meets the need stipulated in that section. However § 61.2 (adopted as § 61.3), has, for several years, allowed rating(s) to be added to a U.S. certificate of a foreign national outside the United States. Further, § 61.13 has, for several years, allowed the FAA to issue certificates and added ratings, subject to this need and to collection of the reimbursement fee required by part 187 [60 FR 19628; April 19, 1995; Fees for Certification Services and Approvals Performed Outside the United States, Rule and Notices.]

NAFI further states that proposed paragraph (b)(1) does not have a limitation contained in proposed paragraph (a)(1). It recommends that the following limitation contained in paragraph (a)(1) be added to paragraph (b)(1): "The pilot certificate or rating is needed for the operation of a U.S.-registered civil aircraft."

Modern multinational corporations may operate aircraft of different countries of registry. The commenter has not provided sufficient rationale for imposing the U. S. certification restriction. The FAA has determined, therefore, that proposed paragraph (b) should not contain a restriction on need to operate an aircraft of U.S. registry.

Some commenters, namely United Airlines (United), Trans World Airlines (TWA), the Air Transport Association (ATA), and the Federal Express Corporation said, in essence, that the proposed part 142 sections that would permit the certification of training centers located outside the United States, and that would permit them to add additional ratings and endorsements, threatens the standardization concept of part 142 training centers and should be dropped.

The FAA plans to maintain standardization by providing adequate guidance on instructor and evaluator qualification, simulation approvals, curriculum approvals, and by emphasizing review and inspection of that guidance.

Other commenters indicated that maintaining standardization of training center activities for those training centers outside the United States will cause a workload on the FAA.

The FAA agrees that creation of foreign training centers will impose a workload on the FAA. See the FAA plan for compensation for the workload imposed by training centers outside the United States in the discussion of comments received in response to proposed § 142.20 (adopted as § 142.19), "Foreign training centers: Special rules."

For the reasons discussed, this section is adopted as proposed, except for editorial changes to make it clear that training centers prepare, train, and recommend applicants for a certificate or rating, but do not actually issue a certificate or rating unless the training center has specific authorization to issue airman certificates.

§ 61.3 (adopted as § 61.5) Requirement for certificates, ratings, and authorizations.

The FAA proposed to amend the lead-in paragraph for § 61.3(d) (adopted as § 61.5 (d)) and to add a new paragraph (i).

As proposed, paragraph (d) inadvertently would have prevented lighter-than-air instruction without a flight instructor certificate. That was not the intent of this rule. Therefore, language allowing such instruction without a flight instructor certificate is restored to paragraph (d) of this section. The FAA did not receive any comments on proposed paragraph (d), therefore, with this minor correction, paragraph (d) is adopted as proposed.

Proposed paragraph (i) prescribed requirements for pilot category III authorization. It reads as follows:

(i) Category III pilot authorization.

(1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second-in-command (SIC) of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as SIC of that aircraft during Category III operations.

Some commenters, namely TWA, Delta, American Airlines (American), ATA, British Aerospace Inc., Training Center (BAe), and AMR Combs (AMR), believe that part 121 and part 135 certificate holders should not be required to comply with paragraph (i) of this section, as they have not been required to comply with the Category II requirements of paragraph (f) of this section in the past.

There is an alternate mechanism in part 121 to authorize certificate holders under that part to conduct reduced visibility instrument approaches. That alternative assures a level of safety equivalent to this rule. Because of the alternate mechanism in part 121 to

authorize the commenters and similarly-situated persons to conduct Category II and Category III operations, the FAA agrees with the commenters, and has added a new paragraph (j) to except part 121 and part 135 certificate holders from compliance with paragraph (i). Current paragraph (f) has been revised in this final rule to conform it to the format of new paragraph (i). The flush paragraph at the end of paragraph (f) has been replaced with a new paragraph (j).

§ 61.4 Qualification and approval of flight simulators and flight training devices. In this new section, flight simulators and flight training devices must be qualified and approved by the Administrator for training, testing, and checking, if the airman using flight simulators or flight training devices is to get credit to satisfy any part of 14 CFR. In addition, each particular maneuver, procedure, or crewmember function to be performed would be subject to the approval of the Administrator.

A few commenters suggested that flight simulators and flight training devices should not have to be approved unless the person using them expected to get some credit for that use to satisfy some requirement of 14 CFR.

The FAA agrees, and the rule text has been amended to clarify that only those flight simulators and flight training devices used to satisfy training, testing, or checking functions, as may be necessary to meet FAA regulatory requirements, must be qualified by the Administrator.

NAFI said that guidelines must be established to specify the requirements for qualification and approval of flight simulators and flight training devices to prevent FAA inspectors from arbitrarily applying their personal standards, and that, once a flight simulator or flight training device is approved by the FAA, the FAA should not require another inspector to approve another of the same make and model.

The FAA agrees that each FAA inspector should not arbitrarily determine standards for qualification and approval of flight simulators. The FAA has established guidelines and technical standards for flight simulators and flight training devices, in AC 120–40, as amended, and AC 120–45, as amended, respectively. These publications are available from the Government Printing Office and may be reviewed at any FSDO. These advisory circulars are made available to facilitate standardization, qualification, and recommendations for approval of particular maneuvers and procedures for each flight simulator and level 5 through 7 flight training device, as they are defined at this time. FAA inspectors may approve the use of flight simulators and flight training devices for the maneuvers and procedures of a particular curriculum. To help ensure standardization, the FAA will provide national guidance for approval of training programs for all part 142 training centers. This guidance should preclude widespread interpretation on the part of individual inspectors.

§ 61.13 Application and qualification. The FAA proposed to revise paragraph (e) to make this section apply to Category III authorizations as well as to Category II authorizations. The revised paragraph reads as follows:

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) For the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used for simulated instrument conditions, if approved by the Administrator for simulated instrument conditions.

AIA and Boeing said that § 61.13(e)(3)(i) should contain the same provision regarding simulated instrument conditions that appears in § 61.13(e)(4); i.e., "* * * a flight simulator or flight training device may be used for simulated instrument conditions. * * *"

The FAA agrees with the suggestion of the commenters. Paragraph (e)(4) has been reworded to make it clear that an approved flight simulator may be used to meet the experience requirement of paragraph (e)(3) as well as to meet the Category II and Category III practical test requirements of part 61.

ATA and several air carriers commented that this proposal fails to include language excepting part 121 and part 135 certificate holders from compliance with this section. They point out that § 61.3 (adopted as § 61.5) contains an exception for part 121 and part 135 operators from the qualification requirements for Category II operations.

The provisions of § 61.13 were not intended to apply to operations conducted by part 121 and 135 certificate holders since the FAA did not intend to propose, under § 61.3, (adopted as § 61.5) that a letter of authorization be required for these operations. These parts prescribe their own requirements for such operations.

Proposed § 61.3 (adopted as § 61.5) has been revised to make it clear that the exception for part 121 and part 135 certificate holders also applies to Category III authorization. (See the discussion of § 61.3 (adopted as 61.5)).

Airbus suggested additional text for this section that would delete ILS approaches, because MLS, GPS, and other approaches are likely in the future.

The FAA agrees that the regulations need to be modified to reflect changing technology; however, this was not a subject of these proposals and cannot be addressed in this rule at this time.

Airbus also suggested that this section be amended to specify the quality of the simulated visual scene required for the practical test.

The FAA agrees that the quality of the simulated visual scene that may be used to complete the Category II or Category III practical test is of great importance. The sections of the rule that actually require and authorize training and testing to show competence in reduced visibility operations, §§ 61.3 (adopted as § 61.5), 61.67, and 61.68, specify that the practical test must be accomplished under an approved training program of an air carrier for that air carrier's aircrews, or in an approved training program of a part 142 certificate holder. Training program approval criteria for each of those training programs specify, or will specify, that a flight simulator must be qualified and approved by the FAA for each maneuver, procedure, and crewmember task. Further guidance for the technical requirements of flight simulation is published in AC 120–40 and AC 120–45, as amended. The FAA believes that the quality control provided by the provisions described above is satisfactory. Quality of the visual scene in all modes of flight and the quality of simulation in general is a high priority for the FAA. For the reasons discussed, this section rewords

paragraph (e)(4) and is otherwise adopted as proposed.

§ 61.21 Duration of Category II and Category III pilot authorizations. In addition to a change in the title, this section proposed that Category II and Category III pilot authorizations would expire 6 months after last issued or renewed.

ATA and a few member air carriers commented that these proposals included a duration of authorizations that is too restrictive for part 135 and part 121 certificate holders.

The provisions of § 61.21 were not intended to apply to operations conducted by part 121 and 135 certificate holders since the FAA did not intend to propose, under § 61.3 (adopted as § 61.5), that a letter of authorization be required for these operations. These parts prescribe their own requirements for such operations.

Proposed § 61.3 (adopted as § 61.5) has been revised to make it clear that the exception for part 121 and part 135 certificate holders also applies to Category III authorization. (See the discussion of § 61.3 (adopted as § 61.5)).

Therefore, this section does not apply to a part 121 or part 135 certificate holder.

Therefore, this section is adopted as proposed.

§ 61.39 Prerequisites for flight tests. The FAA proposed in this section to specify a 60-calendar-day time limit for completion of all increments of the practical test (i.e., the oral increment, the flight simulator increment, and the flight increment).

In the event that the entire practical test is not satisfactorily completed within the prescribed 60 calendar days, an applicant is required to retake the entire practical test, including those increments satisfactorily completed more than 60 calendar days previously.

NAFI recommended minor editorial changes to the proposed rule text, and those minor changes were made in the final rule.

One commenter said that the proposals of this section should be withdrawn and considered in a subsequent review of part 61.

The FAA cannot defer the implementation of these proposals, since they relate to simulation testing, a subject covered by this rulemaking.

No other changes were suggested by commenters. Accordingly, except for editorial changes, this section is being adopted as proposed.

§ 61.45 Flight tests: Required aircraft and equipment.

Proposed paragraph (a) provides that an applicant may use a flight simulator or a flight training device for those tasks of a practical test for which the flight simulator or flight training device has been approved. Previously, this section did not clearly permit the use of flight simulators or flight training devices for practical tests.

Previously under part 61, a flight simulator or flight training device could be used only to demonstrate some SIC qualifications and also to train and test for the ATP certificate. NAFI commented that the FAA should complete guidelines to specify which maneuvers, procedures, and crewmember tasks can be trained, tested, or both, by use of each level of simulation. The FAA agrees, and is drafting such a document (AC 120–46) at the present time. (See also the response to comments about § 61.1).

ATA said, in a comment similar to several others, that the proposed amendments to this section are not necessary, since "* * * the purpose of the current rule was not to specify that an aircraft must be used for the flight test, but rather to prescribe the aircraft requirements for registration, airworthiness, and equipment." ATA continues by observing that "Amendment 61.45, effective Feb. 2, 1970, clearly authorizes the use of simulators for part of the ATPC/TR flight test. * * *"

Current paragraph (a) of this section deals with the equipment an applicant must furnish for each test, as well as with the requirements for registration and airworthiness of that equipment. The wording of the current paragraph excludes any equipment except aircraft from being used for the practical test, except as provided in §§ 61.55 and 61.157. The proposed rule would allow simulation to be used for those tasks of the practical test for which the simulator is approved. The FAA considers this expanded use of simulation justified for reasons stated in the preamble to the NPRM. Accordingly, this section is adopted as proposed.

Jeppesen-Sanderson and AMR questioned how such tasks as cross-country skills, rectangular courses, S-turns across a road, and turns around a point can be evaluated by use of simulation.

At the date of this final rule, there are no flight simulators or flight training devices that have been approved to evaluate several tasks, including the examples offered by these commenters.

The intent in the proposal was to permit an increased use of simulation, in appropriate cases, without having to amend the rules each time that technological advances permit one of these tasks to be evaluated in flight simulation. With the assurance that simulation may be used to meet practical test requirements when it has the technical capability to do so, manufacturers of such devices should be encouraged to develop increasingly realistic simulation. Even with regulatory authority to use simulation for tasks of a practical test, simulation cannot be used for those tasks until the simulation medium has been developed, evaluated, and qualified by the FAA to evaluate such tasks.

Airbus commented that the proposed revisions are unworkable for an aircraft manufacturer's training center and, if implemented, would impose a severe economic burden on the training center and the part 121 operators it supports.

Although Airbus did not specifically reference § 142.57 in its comment, it appears Airbus is addressing the aircraft certification, registration, and airworthiness requirements that are discussed under § 142.57 below. Training centers, which are to be certificated under part 142, have distinct requirements for aircraft certification, registration, and airworthiness. Those requirements, as adopted, are further discussed in § 142.57.

Proposed paragraph (c) provided that an applicant for a practical test must provide an aircraft with engine and flight controls that are easily reached, and that can be operated in a conventional manner by both the applicant and the evaluator. The paragraph also provided that the evaluator may conduct a practical test in an aircraft with different features.

AMR stated that "* * * 61.45(c)(2)(ii) seems to assume that an evaluator will be in a pilot's seat when conducting a practical test in an aircraft. However, evaluators and FAA inspectors currently may conduct the practical test from a jump seat, or some other location other than a pilot's seat. * * *" It recommended rewording to better state this practice.

The FAA agrees that the practice described by AMR has been and will be acceptable, and has reworded paragraph 61.45(c)(2)(ii) accordingly.

Proposed paragraph (d) provided that each applicant for a practical test that requires flight maneuvers and procedures to be accomplished solely by reference to instruments, must provide equipment that excludes the applicant's visual reference to objects outside the aircraft.

Airbus commented that proposed paragraph (d) is unnecessarily restrictive, in that it prohibits the use of vision-restricting devices that more realistically create the seeing conditions the pilot is likely to encounter during

the instrument-to-visual transition, including visual illusions associated with maneuvering by visual reference to landing in restricted seeing conditions. Airbus suggests rewording the paragraph to allow equipment that restricts an applicant's visual reference to replicate what might be seen during a reduced visibility approach transition to a landing.

The FAA notes that this section is directed at maneuvers and procedures that must be done solely by reference to flight instruments; it was not intended to, and is not adequate to address, maneuvering partially by reference to instruments and partially by reference to obscure visual references to objects outside the cockpit. The FAA lists, in separate publications, what objects must be visible at a specified point on an instrument approach in order to continue by visual reference. The FAA is not aware of a device that can be used in an aircraft to obscure visibility of objects other than those listed for continuation of an instrument approach.

The FAA agrees with the commenter that this area of flight is critical. This is an area of flight that simulation can replicate much better than an actual aircraft. For simulation, the FAA requires that the simulated visual presentation be capable of displaying a scene with visibility as restricted as the visibility that the applicant will be authorized to observe when completing approaches. Guidance for scene presentation for simulation is contained in AC 120–40, as amended.

This section is adopted with the changes discussed.

§ 61.51 Pilot logbooks.

The FAA proposed to revise paragraph (b)(1)(ii) to allow pilots to log the time accrued in a simulated flight lesson. The proposed text read as follows:

"(b) * * *
(1) * * *
(ii) Total time of flight or lesson.

AMR commented that the word "flight" should be added before "lesson."

The FAA agrees and has changed the paragraph accordingly.

AMR also commented that the requirement of present paragraph (b)(1)(iii), which states "Place, or points of departure and arrival" is pointless in the context of a simulated flight lesson, as it is quite possible to conduct a simulator training session and have no point of departure or arrival.

The FAA agrees, and has changed the paragraph to except simulated flights from those sessions for which a point of departure and arrival must be entered.

As proposed, § 61.51(c)(2)(i) has been revised, including shifting the provision for recreational pilots to a new paragraph (iv), to make that paragraph easier to read. No substantive change has been made to the previous provision. The reference to a sole occupant of an aircraft has been removed since such a person by definition is the pilot in command.

The FAA proposed to revise paragraphs (b)(3)(iii) and (c)(4)(ii) to permit the logging of instrument flight time in an approved flight simulator or approved flight training device.

One commenter said that paragraph (c)(4)(ii) "* * * only permits logging of simulated instrument conditions in an approved and qualified flight simulator or qualified and approved flight training device. It leaves the logging of simulated instrument flight time by utilization of a view limiting device in limbo and not discussed."

The FAA points out that the wording of this paragraph states that flight simulation "may" be used, not that it "must" be used, and that, in both the NPRM preamble and in the preamble to this final rule, a separate section entitled "Simulated IFR Conditions" is devoted to this discussion to make it clear that a variety of view-limiting devices may be used. Paragraph 61.45(d) as proposed and as adopted makes it clear that view-limiting devices, as well as flight simulation, are acceptable for practical tests.

Andrews University commented that paragraph (c)(4)(ii) is good in that it allows logging of flight simulator and flight training device time both with and without a flight instructor.

The FAA points out that this rule does not create any new authority for a pilot to log flight time in simulation equipment without an authorized instructor. On the contrary, this paragraph specifies that an authorized instructor must be present in order to log pilot time in flight simulation equipment. Further, § 61.51(c)(5) provides that all time logged as instruction time must be certified by the authorized instructor from whom it was received. This requirement is intended to ensure that an applicant's logbook reflects all required instruction which was provided by an authorized instructor.

With the amendment discussed, this section is adopted as proposed.

§ 61.55 Second-in-command qualifications. The FAA proposed in § 61.55 (b)(4) that initial SIC qualification tests for a particular category and class or type of aircraft require at least one takeoff and one landing to be satisfactorily completed in an aircraft of that category, class, and type as applicable.

Several commenters expressed overall agreement with this proposed section.

Boeing and AIA commented that, if the simulator used is qualified for the landing maneuver, the use of an airplane is unnecessary.

The FAA believes that some minimal experience with the category, class, and type of aircraft, if applicable, is required for those SIC applicants not previously qualified in any capacity in an aircraft requiring a crew of more than one person. With the exception of the takeoff and landing that must be performed in the aircraft, the FAA believes that, based on its evaluation of the results of training and testing in flight simulators, the training and testing for SIC qualifications can be satisfactorily demonstrated in a part 142 training course that is subject to FAA approval.

Paragraph (b)(4) of this section was reworded slightly to make it clear that the requirement to complete only one takeoff and one landing in an actual aircraft applies only to persons who complete the rest of the requirements of this section in an approved course at a training center certificated under part 142.

§ 61.56 Flight review. Under the previous § 61.56, the flight review could be performed only in an aircraft. A new paragraph 61.56(h) to this section proposed the use of flight simulators or flight training devices for the flight review if: (1) The flight simulator or flight training device is approved by the Administrator for that purpose; and (2) the flight review is accomplished in an approved course conducted by a training center certificated under part 142.

Jeppesen-Sanderson and the National Air Transportation Association (NATA), representing a consensus of General Aviation Manufacturers Association, Helicopter Association International, and others, commented that simulation should be allowed for the review, in approved courses conducted under part 141 or part 142.

The FAA does not agree that part 141 should be changed in this rule to allow pilot schools to conduct the flight review. Part 142 training centers may conduct flight reviews using simulation because they will have substantially more required in the way of training capability by having the following: (1) at least one flight simulator or Level 6 or Level 7 flight training device; (2) considerably more detailed and structured training programs; and (3) more demanding instructor

qualifications than those required under part 141.

United, in a comment similar to several others, recommended that the flight review should be permitted by simulation in an approved course conducted by a training center certificated under part 121 or part 142.

There are no training centers now certificated under part 121 or any other part. Part 121 certificate holders have a training apparatus that may be called a school, branch, division, center, and a variety of other names. There is little doubt that many of them, with minimal effort at tailoring present training programs, could become training centers certificated under new part 142. There is no need to change the rules to allow part 121 certificate holders to conduct a course to satisfy § 61.56; several courses presented by part 121 schools already satisfy the requirements of § 61.56. In accordance with the current provisions of that section, a person need not accomplish the flight review if that person has satisfactorily completed a pilot proficiency check, or a test for a certificate, rating, or operating privilege. Most, if not all, training and qualification activities undertaken by a part 121 or part 135 certificate holder are for one of these purposes.

Jeppesen-Sanderson commented that discussion and provisions for simulation not qualified for the landing maneuver should be deleted.

Based on experience with simulation, the FAA believes that the flight review can be successfully accomplished in an appropriate flight simulator or flight training device. Previously, landing maneuvers, which likely would be required during a flight review, could be conducted only in a flight simulator qualified as Level B or higher. Section 61.57(g)(3), however, provides a means for the review to be accomplished in a Level A flight simulator or in a flight training device.

One commenter said, in essence, that he believed the flight review should be an evaluation of maneuvers and procedures required for the issuance of the certificate applied for, and that not all maneuvers and procedures can be evaluated in a simulator.

The FAA agrees that not all maneuvers and procedures can be evaluated in a flight simulator at the present time. Turns about a point, chandelles, lazy eights, among others, currently cannot be simulated. However, § 61.56 does not require any specific maneuvers and procedures. An airman may complete a flight review in a simulator only if the review is undertaken after completion of an approved course. The FAA believes that the potential benefits of a structured review, subject to FAA approval, consisting of various subjects and a selection of various, but unspecified, maneuvers and procedures outweigh the fact that flight simulators cannot, at this time, replicate all maneuvers and procedures required of all certificate levels.

For the reasons discussed, this section is adopted as proposed.

§ 61.57 Recent flight experience: Pilot in command. In addition to a change in the title of this section to indicate that it contains PIC currency requirements, the NPRM proposed to revise paragraphs (c) and (d) to read as follows:

(c) General experience.

(1) Except as otherwise provided in this paragraph, no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph in a tailwheel airplane.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules or day instrument flight rules if no persons or property are carried other than as necessary for compliance with this part.

(3) Paragraph (c) does not apply to operations conducted under part 121 or part 135 of this chapter.

(4) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device subject to the following—

(i) The flight training device or flight simulator must have been qualified and approved by the Administrator for landings; and

(ii) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) Night experience.

(1) No person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) Paragraph (d)(1) of this section does not apply to operations conducted under part 121 or part 135 of this chapter.

(3) The takeoffs and landings required by paragraph (d)(1) of this section may be accomplished in a flight training device or flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

FSI suggested that paragraphs (c) and (d) of this section should be changed to "be consistent with § 121.439."

The FAA must presume that the recommendation is to change paragraph (c), as paragraph (d) pertains to night recency of experience, and there is no night recency of experience requirement in § 121.439. The deletion of the night landing requirement was not proposed and is not considered in the final rule. To make paragraph (c), general experience, including day landings, consistent with § 121.439 would require operators to have check airmen, operations specifications, and require each airman to have specific previous experience in the airplane type (with no provision for aircraft not requiring a type rating) in operating parts other than part 121 and part 135. Such dramatic changes to part 91, or other parts of 14 CFR, would simply not be economically justified. This rulemaking is intended to encourage and accommodate the use of simulation for more extant training, testing, and checking tasks, but not to change the tasks required for any particular certificate, rating, or privilege. Therefore, paragraphs (c) and (d) are adopted as proposed.

Also, the NPRM proposed to amend paragraph (e) to permit pilots to meet instrument currency requirements in an approved flight simulator or flight training device.

NWA recommended that proposed paragraph (e) include an exception stating that the requirements of § 61.57 do not apply to operations conducted under part 121 and part 135, similar to the construction of paragraphs (c) and (d) of § 61.57.

During the comment period and final drafting stage for this final rule, the FAA was separately considering a petition for exemption or other regulatory relief from the requirements of paragraph (e) for members of ATA. On November 11, 1994 the FAA published a final rule [59 FR 56385] that revised § 61.57(f) to provide that PICs employed by a part 121 or part 135 operator are excepted from compliance with the recency of experience requirements of § 61.57, only if they are qualified under §§ 121.437 or 135.243 and meet the recent experience

requirements under §§ 121.439 or 135.247. Therefore, this exception in paragraph (f) will provide the relief suggested by the commenter.

NATA commented that "approved course," as used in this section, should include "those courses approved under part 141 and part 61." Several other commenters asked what is meant by "approved course," and whether such a course is limited to takeoffs and landings.

The reference is to courses approved for training centers for establishing or maintaining currency in those tasks specified in this section. The content of such courses would not have to be restricted to takeoffs and landings. The courses might include, for example, different abnormal and emergency situations for takeoffs and landings, such as power loss, runway contamination, gusts and shear, factors causing visual illusion, physiological factors affecting night takeoffs and landings, and others. There is no such course approved under part 141 and, as discussed earlier under § 61.56, adding new courses to part 141 was not proposed and is not considered in this rulemaking.

AMR commented that the preamble suggests that a simulator or flight training device can be used to meet instrument currency requirements, but the regulation requires that at least 3 of the required 6 hours be conducted in an aircraft. It recommended clarification of this point.

The FAA agrees that there was an apparent conflict between the preamble to the NPRM and the rule text dealing with instrument currency. The rule text has been changed to reflect the intent of the preamble; paragraph (e)(1)(i)(A) has been changed to read, in part:

(A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, not more than 3 hours of which may be in approved simulation representing aircraft other than gliders.

A few air carriers commented that they disagree with the proposed change of verbiage which requires an instrument competency check to be given by "a person authorized by the Administrator" instead of by "an FAA inspector, a member of an armed force of the United States authorized to conduct flight tests, an approved FAA-approved check pilot, or a certified instrument flight instructor."

The proposed revision is needed to permit other persons to give the instrument competency check. For example, the new wording will include evaluators for part 142 training centers, designated examiners, pilot proficiency examiners, simulator-only instructors who do not hold a medical certificate, as well as all those persons named in the previous rule.

For the reasons discussed, this section is adopted as changed.

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot. The FAA proposed to revise this section to permit airmen, under certain conditions, to accomplish required PIC proficiency checks entirely in a qualified and approved flight simulator.

Proposed paragraph (a) provided that:

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

NAFI, apparently commenting on § 61.58(a), commented that this section should be revised to close a loophole that allows certain large or turbojet aircraft, such as the DC–3 and some Cessna C–500 series aircraft, to be operated by a single pilot. It points out that, under the current and proposed sections, pilots of those aircraft may not be required to undertake the pilot proficiency checks.

While NAFI's comment may have merit, changing the applicability of § 61.58 is not the purpose of this rulemaking, and the FAA did not propose to change the tasks required for proficiency checks. As stated earlier, the purpose of this rulemaking is to encourage and accommodate the use of simulation for more training, testing, and checking tasks, but not to change the tasks required for any particular certificate, rating, or privilege.

Proposed § 61.58(e)(1) stated the following:

"Except as provided in paragraph (f) of this section, a check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a PIC proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as PIC, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

Proposed § 61.58(e)(1) would have had the effect of requiring a flight simulator qualified as Level B or higher to satisfy the requirements of § 61.58, since only Level B or higher level flight simulators are qualified for landing.

FSI commented that exemptions have allowed successfully an alternative that permits the proficiency check to be accomplished in flight simulators not qualified for landing. That alternative requires the applicant to complete an approved curriculum, hold a type rating in the type aircraft for which the proficiency check is required, and have completed three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls within the 90 days preceding the proficiency check.

The FAA agrees that the alternative is a current and acceptable practice. Therefore, paragraph 61.58(e) is reworded to include this alternative.

Paragraphs 61.58 (e)(2) and (e)(3) contain proposals pertaining to circling approaches and landings in certain simulators. For example, under the proposed rule, a proficiency check, which requires a circle-to-land maneuver, would have to be accomplished in a flight simulator equipped with a visual system that permits accomplishment of the circling approach task. If the flight simulator used is not qualified for circling approaches and the applicant does not demonstrate circling approaches at the training center, proposed § 61.58(e)(2) would require that the training center annotate the applicant's records with the statement, "Proficiency in circling approaches not demonstrated." In addition, proposed § 61.58(e)(2) would restrict the applicant from performing circling approaches as PIC, during conditions less than basic VFR weather minimums. This proposed restriction would remain until proficiency in circling approaches in either an aircraft or a flight simulator qualified for circling approaches is demonstrated to a person authorized by the Administrator to conduct the required check.

FSI commented that helicopter pilots should not be required to perform circling approaches to satisfy the requirement of this section because, in essence, a helicopter can land to a downwind hover, then make a hovering

turn to make a landing to touchdown into the wind.

While this comment may have merit, the FAA did not propose to change the circling approach requirement. This rule considers what tasks may be accomplished by use of simulation, either now or in the future, but does not attempt to determine what tasks should be required for any particular certificate, rating, or privilege. Those tasks are being evaluated in a separate rulemaking project (phase II of the part 61, 141, and 143 review).

Airbus commented that § 61.58(e)(3) is not appropriate for training centers providing training for part 121 and part 135 certificate holders. It continues that an air carrier's operations specifications prohibit circling approaches unless the pilot is qualified to perform circling approaches, and that the approved training for a particular air carrier does not require training in circling approaches unless the employing air carrier is approved to conduct circling approaches. Airbus suggests that this paragraph be written to exclude applicants who are currently employed by a part 121 or part 135 certificate holder.

The FAA agrees in part with the commenter. The comment appears to pertain to proposed § 61.157 however. Therefore, the commenter's suggestion will be addressed in the preamble discussion pertaining to proposed § 61.157.

Section 61.58(f) proposed that, in order to accomplish the recurrent check entirely in a flight simulator, the pilot must have performed the 12-and-24-month proficiency checks in an aircraft, as described in § 61.58(a) (1) and (2).

FSI and Simuflite Training International (SFI) commented that the words "if an applicant for a check required by this section has not satisfactorily completed a PIC check within the period required by paragraph (a)(1) or (a)(2) * * *" that appear in proposed § 61.58(e) are essentially the same as the provisions contained in proposed paragraph (f) which reads as follows:

(f) If a pilot has not completed a pilot-in-command proficiency check within the period required by paragraph (a)(1) or (a)(2) of this section, that pilot must complete the required pilot-in-command proficiency check in an aircraft.

These commenters point out that both paragraphs would therefore preclude reestablishment of PIC proficiency by use of a simulator, which may be more restrictive than current exemptions.

The FAA agrees. It was not intended to propose that § 61.58(e) be made more restrictive than recent practice has allowed. Accordingly, § 61.58(e) has been reworded in the final rule. Paragraph (e) now reads as follows:

(e) A check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) If the flight simulator used pursuant to this paragraph is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated;" and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(3) If the flight simulator used pursuant to this paragraph is not qualified and approved for landings—

(i) The applicant must hold a type rating in the airplane represented by the simulator; and

(ii) Have completed, within the preceding 90 days, at least three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls in the type airplane for which the pilot-in-command proficiency check is sought.

In an apparent reference to proposed paragraph (g), which required a pilot's first PIC proficiency check to be accomplished in an aircraft, FSI commented that it believes that part 142 will have the same supervision and scrutiny required of training programs currently conducted under part 121, and that even the first proficiency check should be allowed in a flight simulator, as currently permitted under § 121.439 (sic). (Apparently the commenter was referring to § 121.441.)

The FAA has considered the comment in the overall context of increasing the use of simulation in lieu of checking in an aircraft. The inclusion of a certificate limitation, as described in the discussion of §§ 61.64 and 61.158, requiring SOE for certain less experienced pilots, will assure that pilots first due a PIC proficiency check in a specific type aircraft will have had some aircraft experience. Accordingly, after further consideration, the FAA has concluded that proposed paragraph (g) is unnecessary and it has not been adopted.

Proposed paragraph (i) stated the following:

(i) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it when due, and future proficiency check due dates do not change.

AMR commented, "The proposed paragraph 61.58(i) leaves open the same questions that the existing language in parts 61.58(g) and 135.301(a) leave open. The proposed paragraph establishes a base month, and a 90-day window for checking." AMR continues that there are any number of good reasons why a pilot may not get the check required by this section within the specified time period, and that the proposed language does not address the case of a pilot whose currency has lapsed. It recommends that the period for checking be extended to include the period from the month before the month a check is due until 2 months after the month a check is due. It further recommends that another subparagraph be added to specify that, for those pilots who do not complete a proficiency check during the period due, a new 12-month period for proficiency check due dates will begin upon completion of the proficiency check.

The FAA does not agree that extending the acceptable time period for completion of a proficiency check for 2 months beyond the due date, and allowing a total window of 4 months for an annual proficiency check, is warranted. Safety dictates that a pilot's proficiency be checked regularly and with some degree of frequency. The FAA has found it acceptable to conduct annual proficiency checks. The scenario described by the commenter would allow annual proficiency checks to become 14-month proficiency checks.

The FAA does not agree that a new provision is necessary for pilots whose currency has lapsed. Paragraph (a) speaks to such a situation in that the pilot must be able to look back over the current month and the preceding 12 months or 24 months and find that he or she has completed the required check.

AIA and Boeing commented that this section should not contain new flight training device definitions.

Flight training device definitions are contained in § 61.2 as adopted, and the rationale for adding those definitions is

provided in the discussion of that section.

As discussed above, the FAA has revised proposed paragraph (e) and deleted proposed paragraphs (f), (g) and (i), and redesignated remaining paragraphs accordingly. This section is adopted with the changes discussed.

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificate (for parts 121 and 135 use only).

The FAA proposed to revise this section title to make it clear that this section is applicable only to applicants who are pilot crewmember employees of a part 121 or part 135 certificate holder. This section would continue to set forth the requirements for adding additional aircraft ratings to pilot certificates other than ATP certificates.

The NPRM proposed a new § 61.64, titled "Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use)." This proposed section contains provisions for adding ratings for airmen other than pilots applying for an additional type rating through successful completion of a part 121 or part 135 approved training program. The detailed testing guidelines are contained in FAA *Practical Test Standards*. More discussion on PTS follows in subsequent paragraphs, and under the analysis of comments about proposed § 61.158 and appendix A of part 61).

Several commenters, including TWA, said that the phrase, "(for parts 121 and 135 use only)" is confusing, and that the FAA should "enforce one, and only one, set of standards for an ATP certificate." Crew Systems said that the proposals appear to create two types of pilot certificates, one for part 121 and part 135 operations and one for all other operations.

The FAA has but one set of standards for the ATP certificate, or for any other certificate. Section 61.63 and § 61.64 are written differently to articulate the different procedures for gaining added ratings, including an added rating to the ATP certificate. Neither section addresses standards for the application of the ATP certificate. Part 61 has for years listed, under several paragraphs entitled "Flight proficiency", broad areas of operations in which each applicant must demonstrate competence to be awarded any airman's certificate except for the ATP certificate. For the last several years, the specific tasks appropriate for an applicant for any certificate or rating, the conditions under which the tasks are to be performed, and the standards for each task have been published in PTS.

Additionally, the FAA points out that there are now and have been for many years at least two different ways to gain an ATP certificate, or ratings to that certificate, or both. The certificate and ratings may be earned pursuant to the successful completion of an air carrier training program or by meeting the requirements of § 61.63 or § 61.157 outside an air carrier training program. Sections 61.63 and 61.64 recognize the different ways to gain added ratings, and address the use of simulation for each of those ways.

AIA, Boeing, and AMR commented about this section (and § 61.64) in general. They stated that these sections are redundant, and that the requirements for a type rating or an ATP should be the same regardless of the employment status of the airman concerned.

NATA commented that there was insufficient basis for the formation of what amounts to two types of ATP certificates, and that the certification standards for additional ratings should be the same regardless of employment. These comments were similar to several others.

To clear some confusion apparently held by the commenters referenced in the previous paragraph, the FAA points out that § 61.63 (and new § 61.64) set forth the proposed requirements that would have to be met to add all additional ratings to airman certificates other than the ATP certificate, but not the requirements for the ATP certificate nor added ratings to that certificate.

As stated earlier in the discussion of this section, the FAA agrees that there is only one standard for any added rating. The commenters have observed that there have been two different sets of certification requirements (but not standards) for an added rating to the ATP certificate. One requirement is the PTS, which requires all applicants who are not applying by virtue of having successfully completed an employing air carrier training program to complete all listed tasks. Another requirement, appendix A of part 61, allows waiver of training, testing, and checking of tasks that are excluded by an air carrier's operations specifications for those applicants who are applying by virtue of having successfully completed an employing air carrier training program.

Airbus commented that proposed § 61.63 this section inadvertently imposes an unnecessary economic burden on training centers of aircraft manufacturers which manufacture airplanes to meet the standards of part 25. It states that this section proposed § 61.63 should be applicable to FAA inspectors and employees of a manufacturer training center, along with aircrew employees of a part 121 or part 135 certificate holder.

The FAA does not see a different economic impact as a result of applying the alternatives of this section, instead of § 61.64, to individuals who are not aircrew employees of a part 121 or part 135 certificate holder. The persons mentioned by the commenter have always been required to complete all the requirements now enunciated in § 61.64; the exclusion from the requirement to train and test in certain tasks (for example, the circling approach maneuver) never applied to a pilot not employed by a certificate holder subject to the operating rules of part 121. Therefore, the requirements of § 61.64 are not additional requirements for the persons mentioned by the commenter, and do not impose an additional economic burden.

In response to the comment about the requirements to be met by FAA inspectors to gain an added rating, the FAA is clear that the requirements for an individual airman apply to an FAA inspector.

For the reasons described, this section is adopted as proposed.

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than part 121 and 135 use). The FAA proposed in paragraphs (b)(1) and (c)(1) of this section that an applicant who holds a pilot certificate and applies to add a category or class rating must present a record of training certified by an authorized flight instructor showing that the applicant has accomplished certain training. Paragraph (d)(1) proposed that an applicant who holds a pilot certificate and applies to add a type rating must present a record of training certified by an authorized ground or flight instructor showing that the applicant has accomplished certain training.

In addition to the comments on this section already addressed in the discussion relating to proposed § 61.63, FSI commented that the wording of proposed §§ 61.64(b)(1), (c)(1), and (d)(1) be changed to delete the words "flight" and "ground" wherever they appear before the word "instructor." In essence, it says that, as proposed, this section would not allow authorized instructors, who do not hold flight instructor certificates, to certify flight training accomplished in simulation. It states that this practice already is permitted under existing exemptions.

The FAA agrees. Accordingly, the final rule incorporates the revisions suggested by FSI.

Paragraph (e) proposed the following:

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed in—

(1) An airplane of the same type, for which the type rating is sought; or

(2) Subject to the limitations of paragraph (e)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

STI asked, "What could be a possible (sic) another manner approved by the Administrator?" It asked if the intent is to allow current part 61 exemption holders to submit a program outside of a part 142 certificated training center. STI believes that to do so would allow organizations to offer additional type ratings without a part 142 certificate, and that would negate "the level playing field for all operators subject to part 142 certification."

The new rule will allow current part 61 exemption-holding simulator training centers to continue to operate only if they obtain a part 142 certificate. The phrase in question was intended to allow for approval of unforeseen circumstances for completing the tasks required to obtain a part 142 certificate without changing the rule. The FAA has determined, therefore, that proposed paragraph (e)(4) can be withdrawn and has renumbered several paragraphs accordingly.

In a general comment concerning actual aircraft flight experience, the NTSB stated the following:

> The Safety Board realizes that there are limitations to simulation and believes that the proposed regulations must be sensitive to the safety needs served by retaining some aspects of actual flight experience.

The NTSB continued:

> The Safety Board recognizes that experience in * * * training devices cannot fully replicate operational experience in the actual flight environment and the "seasoning" that such experience provides * * *. The Safety Board urges the FAA to review the proposed regulations to ensure that they achieve the intent while still safeguarding basic pilot and instructor skills provided by the physical operating environment.

In another comment addressing general experience in actual aircraft flight, ALPA stated the following:

> While it is true that aircraft simulation has reached unparalleled levels of realism, and we strongly support increased use of advanced simulation, there are other factors which are important, especially for low-time pilots.

One factor is familiarity with and management of the air traffic control (ATC) environment. Unless every simulator flight is conducted as line oriented flight training (LOFT), a great deal of the required ATC interaction is missed. Under ideal circumstances, LOFT will include realistic interaction with ATC and other aircraft. Unfortunately, LOFT sessions are not always conducted with this degree of environmental realism. It is the operation and decision-making experience which one receives in an aircraft in an ATC environment, including interaction with other aircraft, which makes them a safer pilot. This is especially important early in a pilot's learning experience.

ALPA added: "For these reasons, caution should be exercised in relying too heavily on simulator training in a pilot's early training and experience," and "A pilot who is a candidate for an ATP has likely flown for a commercial operator for several years. * * *"

The FAA agrees with the commenters' analysis of the importance of actual aircraft experience when an applicant will use flight simulation for a large portion of required training and testing. The FAA has had, for years, mechanisms for part 121 air carriers and for part 91 and part 125 operators to ensure the flying public that PIC's have actual aircraft experience prior to acting as PIC for aircraft requiring a type rating. Part 121 has a requirement for a potential PIC to receive specified initial operating experience (commonly known as IOE, required by § 121.434) under the supervision of a check pilot. This operating experience requirement applies only to the ATP certificate.

Notwithstanding the recency of experience requirement of § 61.57, experienced pilots who operate under part 91 or under part 125 have no further operating experience requirement. Relatively inexperienced pilots who intend to operate under part 91 or under part 125 and who gained an airman certificate with a type rating or added a type rating to any level of airman certificate entirely by training and testing in a flight simulator have had a limitation placed on their airman certificate requiring operating experience similar to that required by § 121.434. The terms of exemptions permitting these pilots to train and test entirely in flight simulators defined the experience level thresholds and set the requirements for SOE. The SOE requirement applies to any level of airman certificate. The SOE requirement applies only to a pilot who is to act as PIC for the first time in a particular type aircraft, and may be completed under the supervision of another qualified and current PIC.

In light of its long-standing requirements for operating experience for new PIC's of aircraft requiring a type rating and to implement the NTSB recommendations and those of other commenters, the FAA is convinced that, in the interest of safety, it is essential to continue requirements for sufficient operating experience before newly certificated or rated pilots act as PIC's of aircraft requiring a type rating.

For the reasons discussed in the preceding paragraphs, the FAA has added new paragraphs (e)(4) through (e)(12) specifying SOE requirements for certain less experienced pilots who apply for an additional rating. These revisions are fully responsive to the NTSB's and ALPA's comments. They reflect current FAA practice with limitations contained in exemptions or placed directly on pilot certificates or ratings obtained through simulation.

With the exception of the revisions discussed above, § 61.64 is adopted as proposed.

§ 61.65 Instrument rating requirements. The FAA proposed in paragraph (c)(3) of this section, that an applicant for an instrument rating would have to have received instruction in instrument approaches using two different nonprecision approach systems and one precision approach system. Paragraph (g)(3)(i) proposed that the practical test for the instrument rating must include at least one published precision, nonprecision, and circling approach. Previously, this section had listed specific types of precision and nonprecision instrument approaches that an applicant had to receive instruction for, and had to satisfactorily accomplish, during practical testing.

One commenter said that this section should continue to list specific non-precision and precision approaches that an applicant must train for and show competence in, instead of changing to the generic description, as proposed.

The FAA believes that this change will help keep the rule from being or becoming obsolete and will provide relief to some applicants. With ever-changing technology, some instrument approaches may become obsolete in a few years. New instrument approaches have been added since the current rule was written, and other new ones are certain to be added.

For the reasons discussed, paragraphs (c)(3) and (g)(3)(i) are adopted as proposed.

Section 61.65(e)(2)(ii) proposed that the 20 hours of instrument instruction by an authorized instructor in a flight simulator or flight training device, currently allowed under part 61, be

increased to 30 hours of instruction in a flight simulator or flight training device if the instruction is accomplished in an approved course conducted by a training center certificated under part 142.

Paragraph (h)(1) of the proposed revision to this section would permit the total pilot aeronautical experience requirement for the instrument rating to be reduced from 125 hours of pilot flight time as currently required by § 61.65(e)(1) to 95 hours of pilot flight time, which may include 35 hours of simulated or actual instrument flight time if the entire instrument curriculum is accomplished under an approved part 142 course.

Andrews University asked why the increase in credit, and why part 141 pilot schools could not also have an increase to 30 hours.

AMR Combs (AMR), an affiliate of American Airlines, and NATA commented that the proposals for certain reductions in aeronautical experience or instructional hours for the instrument rating conducted at a part 142 training center place part 141 pilot schools at a competitive disadvantage. They recommended that the FAA grant similar authority to part 141 schools that have approved flight simulators or flight training devices.

Jeppesen-Sanderson commented that if a reduction of required hours from 125 hours of pilot flying time to 95 hours is valid for part 142 then it is valid for part 141.

Another commenter said that the proposed reduction of pilot flying time to 95 hours under proposed paragraph (h)(i) does not do justice to the level of exposure a person should have to operate safely in the IFR environment. The commenter continues that he can attest to the difficulties encountered when experience requirements were reduced from 200 to 125 hours. The commenter believes that the level of skill required of the single-pilot IFR operation is the most demanding in aviation. The commenter states that the rigid oversight proposed for part 142 is commendable, but inadequate to compensate for the lack of experience.

The FAA believes that the proposed changes discussed above are justified based on innovative training concepts that will be a feature of part 142 training centers. The reasons for the creation of a new training entity and assigning specific authorities and privileges to it are discussed under a previous section in this document entitled "Discussion of the Amendments and the New Rule."

While part 141 allows the use of ground trainers, except for part 121 and part 135 certificate holders training their own aircrews, under this final rule, all flight simulator training, testing, and checking for which an airman is to receive credit to satisfy any requirement of 14 CFR must be accomplished in part 142 training centers. These training centers will be subject to more stringent training program requirements than part 141 pilot schools. Part 142 training centers will be substantially more sophisticated than schools certificated under part 141 by virtue of the use of the most advanced levels of flight simulation. They will have considerably more detailed and structured training programs, their instructors will be subject to more demanding qualifications, and they will have more interaction with potential air carrier clients than part 141 pilot schools have.

Experience has shown that there is a greater efficacy in more structured training using high fidelity simulation than in traditional aircraft-only or aircraft and complementary flight training device training such as provided by a part 141 pilot school. At present, under § 141.41, a part 141 pilot school may use a flight simulator only to the extent that a flight training device may be used. The requirements for the part 142 certificate are discussed in more detail in the applicable section-by-section discussion.

In response to the comment about placing part 141 pilot schools at an economic disadvantage, the FAA believes that the considerations discussed above justify the treatment afforded part 142 training centers. For the reasons discussed, the aeronautical experience requirements for the instrument rating can be reduced as proposed; all other proposals discussed above also are adopted in the final rule.

§ 61.67 Category II pilot authorization requirements.

The FAA proposed in paragraph (c)(4) of this section that the practical test for this authorization include approaches that need not be conducted down to the alert height or decision height, as applicable, authorized for Category II operations but only if the approaches are conducted in a flight simulator or flight training device. This section applies only to ILS approaches, since Category II applies only to ILS approaches by definition.

Airbus Service Company, Inc., (Airbus) commented that references to ILS in this section should be deleted, since other means of conducting Category II operations will soon be available. It also recommended that references to alert height be deleted, because it is not appropriate for Category II operations.

The FAA agrees that other means of conducting precision instrument approaches may soon be available. Those approach procedures may not include different categories, as ILS procedures do. It would not be appropriate to determine category requirements for other instrument approach procedures that do not yet exist. Therefore, the references to ILS contained in the proposed rule (this section and § 61.68) are adopted in this final rule.

The FAA agrees that alert height is a term not normally applicable to Category II operations, and the term is deleted in the final rule.

The FAA stated in paragraph (d)(3) of this proposed section that oral questioning could be conducted at any time during the flight increment of the practical test.

One commenter stated that oral questioning must never be allowed during the operation of an aircraft. He states that the demands placed on an applicant being tested are great enough without the applicant having to interrupt a train of thought to answer a question.

The FAA agrees that an applicant should not be carelessly questioned during the conduct of a practical test. Routine questions that can be effectively conducted in an interview situation while on the ground should and will be conducted on the ground to the maximum extent possible. However, the FAA believes that it is in the interest of safety to allow evaluators to conduct limited oral questioning during the practical test. The FAA needs to be able to determine that an applicant is capable of recognizing and responding to outside questions, statements, or directions. A verbal warning from air traffic control (ATC) or another crewmember, an ATC inquiry about the status of flight progress or windshear encounter, report of a windshear, traffic, or other hazard to landing are examples of outside questions or interruptions that a crewmember must be able to cope with and respond to in the interest of safety. An effective method to determine that an applicant can cope with these examples and all the requirements of a practical test is to allow the person conducting the practical test to insert realistic distractions or to make simulated instructions or warnings to an applicant during the actual conduct of practical tests.

The FAA has determined that the duration of this authorization should remain in § 61.21. Accordingly, proposed paragraph (e) is not adopted.

For the reasons discussed above, this paragraph is adopted as proposed

except for the changes discussed, minor typographical corrections, and deletion of the term "alert height."

§ 61.68 Category III pilot authorization requirements. This new proposed section sets forth the requirements for a pilot to conduct Category III operations. Several part 121 certificate holders commented that the section should be amended to include the authority for part 121 and part 135 certificate holders to conduct the authorization practical test pursuant to their approved training programs.

The FAA agrees that part 121 and part 135 certificate holders should be authorized to conduct the practical test pursuant to their approved training programs. A new § 61.3(j) is adopted (as § 61.5 (j) by this final rule to permit this practice.

The FAA stated in paragraph (e)(4) of this proposed section that oral questioning could be conducted at any time during the flight increment of the practical test.

Boeing and AIA commented that paragraph (e)(4) should be amended to clarify that the oral increment and flight increment do not occur simultaneously.

The FAA agrees that the two increments should be separate to the extent possible, but believes that the authority of inspectors and examiners to ask clarifying questions during the flight increment as and if necessary should be stated in the rule. See the discussion of oral questioning during the flight increment of the practical test in the analysis of § 61.67. Therefore, paragraph (e)(4) is adopted as proposed.

Crew Systems commented that inclusion of Category III pilot authorization provisions in this rulemaking is inappropriate, for such provisions do not relate to the purpose of the rulemaking-the certification of training centers.

One objective of this rulemaking is to facilitate the use of simulation and to cause growth in that industry. One task that flight simulators are being used for now, and almost certainly will be more in the future, is Category III training and testing. Thus, the provisions of this proposed section relate directly to the primary purpose of this rulemaking.

AMR commented that the "excruciatingly detailed practical test procedures in proposed paragraph 61.68(e)" are not appropriate regulatory material. It suggests that the FAA delete proposed paragraph (e) of § 61.68 in its entirety. It recommends that the proposed training and practical test procedures be included in AC 120–28C, or published in PTS. Ferrarese Associates, Inc., made essentially the same comment.

The FAA has determined that it is appropriate to set forth those mandatory requirements for experience and testing of airmen applying for Category III authorization in a regulation. An advisory circular gives non-mandatory advice only for a means, but not the only means, to accomplish certain actions. The information in this section is similar to the regulatory language concerning Category II approach authorization, contained, for many years, in § 61.67.

The FAA has determined that the duration of this authorization should remain in § 61.21. Accordingly, proposed paragraph (f) is not adopted. With this change, this section is adopted as proposed.

§ 61.109 Airplane rating: Aeronautical experience. The FAA proposed to allow credit for instruction received in approved flight simulators and approved flight training devices in this section. The FAA previously required 20 hours of flight instruction, and all of that instruction must have been received in an airplane.

Under this proposed section, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor is creditable toward the 20 hours of flight instruction required for a private pilot certificate, whether or not that instruction is accomplished in a training center certificated under part 142. The 2.5 hours of instruction time may be increased to 5 hours of instruction in a flight simulator or flight training device, provided the instruction is accomplished in an approved course conducted by a training center certificated under part 142.

The flight instruction received in a flight simulator or flight training device must be accomplished in a flight simulator or flight training device representing an airplane.

Previously, § 61.109 required at least 40 hours of flight instruction and solo flight time. Under this proposed section, the 40 hours of aeronautical experience may be reduced to 35 hours provided that the entire private pilot curriculum is accomplished under an approved part 142 course.

The 35 hours of aeronautical experience may be further reduced under paragraph (i) of this section if the applicant completes an approved private pilot course and if the Administrator determines that a further reduction is appropriate based on a demonstration of training program effectiveness that warrants testing such a reduction. Under this exception, a training center might propose a test training curriculum the effectiveness of which might be validated by reference to post-training data covering at least 1 year of student performance before such a reduction could be considered for other students.

Andrews University commented that it agrees with this proposed section.

The Japanese Civil Aviation Bureau commented that the reduced aeronautical experience requirements of this section and §§ 61.113, 61.129, and 61.131 may have an impact on Convention on International Civil Aviation (ICAO) agreements, in that students meeting reduced aeronautical experience requirements may not meet ICAO member states' requirements for certificates based on a U.S. certificate.

The FAA points out that the reduced aeronautical experience requirements authorized for part 142 training centers are the same as the reduced aeronautical requirements that have been authorized for part 141 pilot schools for many years. Therefore, certificates and ratings issued under part 142 would have the same ICAO member states' acceptance as certificates and ratings issued under part 141. The provision of paragraph (i), which might allow a particular course with fewer hours of aeronautical experience than otherwise specified in this section, might lead to a limitation on an airman's certificate that is similar to the limitation specified in § 61.111(c) and in several other sections in this part.

ALPA commented that the preamble discussion of paragraph (i) of this section, and similar paragraphs contained in other proposed sections, includes vague statements of data that a training center would have to track to validate its ability to train effectively in fewer than the minimum number of hours specified in each proposed section.

The FAA agrees that the few terms offered as examples are not elaborately discussed. The intention is to allow maximum flexibility to a training center to develop, at some future date, innovative curriculums that might adequately train for a specific certificate or rating in fewer than the current minimum number of hours. In order to gain the privilege of further reducing minimum training hours, a training center will be required to demonstrate that it can provide proper training in fewer hours. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. A training center would have to present historical data covering at least

1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

ALPA also commented that 1 year of data collection is an inadequate period to collect data from which to draw conclusions used to validate the effectiveness of training students in fewer than the minimum number of hours set forth in the proposed rule. In support of this comment, it stated that accident and incident rates are difficult to quantify for even 10-year periods.

The FAA points out that accidents and incidents are just examples of pilot performance that may be tracked, and are not meant to be the only items tracked. The FAA believes that it is in the public interest, and safe, to allow a reduction if data collected and evaluated justify such a reduction. If the performance data do not clearly justify the reduction, none will be undertaken. If, after a test is undertaken, the FAA determines that the performance of the pilots in the test group is below standard, the FAA will modify the validation data collection period or any other control measure that may be indicated.

AMR commented that part 141 pilot schools would be at a disadvantage in that, unlike training centers, they would not be permitted to reduce the number of hours of aeronautical experience as proposed in this and similar sections. It recommends that pilot schools be allowed the same opportunity if the pilot school has approved flight simulators or flight training devices.

The minimum number of hours of aeronautical experience proposed in the NPRM for purposes of part 142 is the same aeronautical experience required under part 141 for several years. The potential for an even further reduction is extended to part 142 training centers only, because the FAA is convinced that further reduction would be possible at this time only under the more sophisticated training environment required of these schools.

AMR also commented that in the training environment it is relatively normal for a student to have more than one instructor during a course of instruction. Proposed § 61.109(a), it points out, speaks of a singular instructor, as does the existing regulation. To better reflect the training center environment, and to avoid the implication that a trainee must have one and only one instructor, it recommends that the proposed language be changed to say "flight instruction from an authorized instructor or instructors."

The FAA agrees that students are likely to have more than one instructor, and it does not intend to prohibit this practice. The term "authorized instructor" as used throughout this final rule is intended to mean that instruction may be received from one instructor or from more than one instructor. The interpretive rules in 14 CFR part 1 state that words importing the singular include the plural, and that words importing the plural include the singular.

Therefore, for the reasons stated, this section is adopted as proposed.

§ 61.113 Rotorcraft rating: Aeronautical experience. Under current § 61.113, an applicant for a private pilot certificate with a rotorcraft category rating must have at least 40 hours of flight instruction and solo flight time in aircraft. Instruction in flight simulators or flight training devices is not authorized. The FAA proposed in paragraph (a)(1) of this section that the 40 hours of flight instruction and solo flight time must include at least 20 hours of flight instruction from an authorized flight instructor.

AMR made substantially the same comment that it made about proposed § 61.109 about a student having more than one instructor. See that section for the FAA response.

With minor revisions to its format and structure, this section is adopted as proposed.

§ 61.129 Airplane rating: Aeronautical experience. Under proposed § 61.129(b), an applicant for a commercial pilot certificate with an airplane rating would have to have at least 250 hours of flight time as a pilot, which could include not more than 50 hours of instruction in a ground trainer acceptable to the Administrator.

Under proposed § 61.129(b)(1)(ii), up to 100 hours of flight simulator instruction or flight training device instruction could be credited toward the 250 hours of total flight time if the instruction is accomplished in an approved course conducted by a training center certificated under part 142. To be credited toward the total flight time requirement for a commercial pilot certificate, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

AMR, in a comment identical to several others, commented that the terms of proposed § 61.129(b)(1)(ii) should be made applicable to training under part 121, part 135, part 141, or SFAR 58.

For reasons discussed in the analysis of comments to § 61.65, additional flight time may be performed in a simulator and credited toward total flight time, only if the simulated flight time is accomplished in accordance with a training program approved under part 142, part 121, or part 135.

NATA commented that this section should be left unchanged.

Jeppesen-Sanderson commented that an approved part 142 commercial course would allow all training, including cross-country experience, to be conducted in a flight simulator or flight training device, and that "* * * it is impractical to conduct the entire commercial training program in a simulator or flight training device."

In fact, the proposed rule would not affect the current requirement pertaining to cross country flights, and it proposed that a maximum of 100 hours of the total of 190 hours of aeronautical experience may be accomplished in a flight simulator under part 142. The justification for permitting up to 100 hours of training to be accomplished in a flight simulator may be found in the discussion of comments to § 61.65 and in the section of this document entitled "Discussion of the Amendments and the New Rule."

The FAA has decided to omit the words "Approved commercial pilot training program conducted under part 142" from the title of paragraph (c). Paragraphs within a section do not normally have titles. With this change, this section is adopted as proposed.

§ 61.131 Rotorcraft rating: Aeronautical experience. Under current § 61.131, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must have been in a helicopter.

Under the proposed revision to this section, the applicant may obtain 35 hours of credit toward total flight time requirement in a flight simulator or flight training device, or a credit of up to 50 hours of the total required flight time in a flight simulator or flight training device if the flight simulator time or flight training device time is obtained from a training center certificated part 142. Previously, there was no provision for crediting flight simulation time toward this rating. Under the proposed rule, to be credited toward the total 150-hour flight time requirement, flight simulator or flight training device instruction received

would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

A provision to allow a further reduction of the 150-hour flight time requirement, based on demonstrated ability to accomplish training requirements in less time, was also proposed.

AMR commented that the ratio of dual time to solo time is out of balance, and that each of those categories of aeronautical experience should be adjusted.

The ratio of dual to solo aeronautical experience is not appropriate to consider in this rule, which is aimed at increased use of simulation. The NPRM did not propose any changes to either solo or dual flight time requirements.

With minor typographical changes, this section is adopted as proposed.

§ 61.155 Airplane rating: Aeronautical experience. The FAA proposed to amend this section to allow more credit for the use of simulation toward the total required aeronautical experience requirement for an airplane rating on an ATP certificate.

Under existing § 61.155 (b)(2), an applicant for an ATP certificate with an airplane rating must have had at least 1,500 hours of flight time as a pilot, including, among other things, at least 75 hours of actual or simulated instrument time, at least 50 hours of which were in actual flight. Up to 25 hours could have been obtained in a simulator.

Under the provisions of paragraph (a)(2)(iii)(B) (3)(ii) of the proposal, the 25 hours of simulated instrument time previously allowed could have been increased to 50 hours if accomplished in an approved course conducted by a training center certificated under part 142.

ALPA and Andrews University commented that it is inconsistent to propose to allow an increase of only 50 hours of simulated flight time for an applicant for an ATP certificate since proposed § 61.129 would permit a student to credit up to 100 hours of simulated flight experience toward the total requirement for the commercial certificate.

The FAA believes that the proposal is not inconsistent. The flying hour credit allowed by proposed § 61.129 was for total flight hours; the credit in this proposed section is for simulated instrument experience. However, in response to comments, paragraph (a)(3), as adopted, allows not more than 100 hours of total simulated pilot experience to be credited toward the total requirement for this certificate. This recognizes that those 100 hours could already be a part of time accumulated in obtaining a commercial pilot certificate.

NATA and ATA commented, in a comment similar to that of several of its member organizations, that the proposal permitting increased amounts of simulated flight time to be credited as aeronautical experience should be extended to part 121 and part 135 certificate holders, and to holders of AQP authorization.

It was not the purpose of this rulemaking to extend increased training credits to holders of certificates issued under part 121 or part 135. However, any curriculum can be organized for presentation under principles described by AQP, presented to the FAA for approval and, upon approval, presented to aircrew employees of the authorization holder or, if the authorization holder also holds a part 142 certificate, to any other person.

Boeing commented that this proposed section is not applicable to foreign pilots and military pilots.

The provisions of this proposed section, however, do apply to military pilots and foreign pilots.

This proposed section is adopted with the changes described above.

§ 61.157 Airplane rating: Aeronautical skill (for parts 121 and 135 use only). The FAA proposed to revise this section title to make it clear that it is applicable only to applicants for an ATP certificate (with an airplane rating) who are pilot crewmember employees of a part 121 or part 135 certificate holder applying pursuant to that employer's approved training program. The FAA proposed a new § 61.158 that applies to other applicants, as discussed under the next heading.

Numerous comments were received concerning this section. In addition to the persons commenting on proposed § 61.63, which concerns a similar subject, American Airlines (American), Delta, and FSI commented on this section. The comments were substantially the same as the comments regarding proposed § 61.63.

See the response to comments concerning proposed § 61.63 for a discussion of the reasons for reserving § 61.63 for part 121 and part 135 use. The same rationale applies to this proposed section.

The FAA will continue the practice of allowing waiver of certain maneuvers, on an individual basis, as currently provided in appendix A of part 61 and the PTS, for those persons who have successfully completed an employing air carrier's approved training program for the type airplane involved within the preceding 6 calendar months. The waiver authority will apply only to applicants whose employer does not have the procedure authorized in the operations specifications, for example, circling approaches authorized by operations specifications. The waiver authority will not apply to all persons who are employed by an air carrier simply because of that person's employment.

The FAA restructured proposed paragraph (a) to better conform to proper outline and grammatical construction. The subject matter of proposed paragraph (a)(2) is better placed in existing paragraph (c). However, in the final rule, the FAA has determined that only paragraph (g) should be added and therefore has withdrawn proposed paragraphs (a) and (c).

The FAA has, for years, received questions about whether completion of a proficiency check taken under part 121 or part 135 would suffice for the certification requirements of this section. The FAA has maintained a policy that the proficiency checks in question suffice to meet the certification requirements of this section. To make that position clear, the FAA has added a new paragraph (g) to this proposed section.

This section is adopted with the changes discussed.

§ 61.158 Airplane rating: Aeronautical skill (for other than parts 121 and 135 use). The FAA proposed in this new section general skill requirements for each ATP certificate applicant with a single-engine or multiengine class rating or type rating if the applicant is not a participant in an air carrier training program as an aircrew employee of an air carrier. This proposed section was intended to clarify which certification procedures apply to aircrew employee applicants of air carrier approved training programs and which apply to other applicants.

Paragraph (c) proposed the following:

(c) The tasks required by paragraphs (a) and (b) of (§ 61.158) shall be performed in—

(1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or

(2) Subject to the limitations of paragraph (c)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought does not require a type rating.

(3) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

STI asked, in essence, whether paragraph (c)(4) is intended to allow current part 61 simulator exemption holders to submit a training program for FAA approval without first obtaining certification under part 142.

This is the same question that STI asked concerning proposed § 61.64. Proposed paragraph (c)(4) is withdrawn for the same reasons stated in the response to the comment regarding proposed § 61.64, and subsequent subparagraphs have been added to include the requirements for SOE for certain pilots who train and test for added ratings predominately or entirely by flight simulation.

Several other commenters stated that the FAA appears to be proposing two different standards for the ATP certificate or added ratings to that certificate, one standard applicable to applicants who will conduct air carrier operations and a second standard for applicants who will conduct other than air carrier operations. See § 61.64 for the FAA response to comments made by the NTSB and ALPA that applies also to this section.

An editorial change was made to paragraph (a)(1) of this section to make the titles of the areas of operation exactly match the table of contents for those areas of operation in PTS "FAA–S–8081–5." Editorial changes were made to paragraph (2) to make it clear that that paragraph applies only to additional airplane ratings. Additionally, although no comments were received about these proposals, the FAA has withdrawn proposed paragraph (2) (iii) and (iv) of this section given that they cover issues not germane to the objectives of this final rule.

A few part 121 certificate holders asked if proposed § 61.158 would apply if a type rating is sought from a trainer other than one's own employer.

As proposed, this section would apply to all applicants, who are not aircrew employees of a certificate holder, being trained in accordance with the requirements of subpart N of part 121 or subpart H of part 135, as applicable.

Andrews University asked what minimum level of flight simulator or flight training device would be required by proposed paragraph (c)(2) to conduct a practical test.

As discussed elsewhere throughout the proposal, the simulation medium, in addition to the requirements set forth under proposed paragraph (c)(2), must be qualified and approved for each maneuver, procedure, and crewmember function for which a training center proposes to use that simulation medium. The qualification standards are listed in AC 120–40, as amended, and AC 120–45, as amended, as applicable. In addition to the guidance contained in these AC's, the FAA is preparing a new AC 120–46, mentioned earlier in the discussion under § 61.1, which will assist training center certificate applicants by presenting a matrix showing the level of simulation that is approved for various maneuvers, procedures, and crewmember functions. The availability of that AC will be announced separately.

This proposed section is adopted with the changes discussed in the preceding paragraphs.

§ 61.161 Rotorcraft rating: Aeronautical experience. Under current § 61.161(b), an applicant for an ATP certificate with a rotorcraft category and helicopter class rating must have had at least 1,200 hours of flight time as a pilot, including 75 hours of instrument time, 25 hours of which may have been simulated instrument time in a flight simulator or flight training device. Proposed § 61.161 would allow the 25 hours of simulated instrument flight time to be increased to 50 hours if accomplished in an approved course at a training center certificated under part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

AMR commented that the 25 hours of simulated instrument flight time should be increased to 50 hours if accomplished under part 121, part 135, or part 141 if accomplished pursuant to an AQP authorization.

The FAA does not agree that it is appropriate to increase simulated flight time as recommended by this commenter. See the section-by-section discussion under § 61.65 and the section of this preamble entitled "Discussion of the Amendments and the New Rule" for the rationale behind FAA's position on this issue.

For the reasons discussed above, this section is adopted as proposed.

§ 61.163 Rotorcraft rating: Aeronautical skill. The FAA proposed to revise this section to allow an airman to complete the practical test for a helicopter rating in a flight simulator or flight training device if the practical test is taken as a part of a curriculum at a training center certificated under part 142.

FSI asked if it is an oversight that this section does not contain some of the same proposed paragraphs that are contained in proposed § 61.158, which is the parallel section for airplane ratings.

It is not an oversight that this section does not exactly parallel § 61.158. The proposals that FSI questions contain provisions that would require an applicant to present a record of having received ground training and flight training on specified subjects, and to have been shown competent in specified areas of aeronautical knowledge.

Proposed § 61.158(a)(2)(iii) and (iv), which are the two paragraphs the commenter suggested that the FAA parallel in this section, have been withdrawn from § 61.158 in this final rule as issues not germane to the objectives of this rulemaking. The FAA did not propose similar provisions in proposed § 61.163. Therefore, it is inappropriate to consider this comment at this time. The comment will be considered if such proposals are made in the future for rotorcraft ratings.

FSI also recommended that the proposed areas of operations listed in § 61.163(a) be titled and re-ordered to be consistent with the table of contents contained in "Airline Transport Pilot and Type Rating," (PTS FAA–S–8081–5).

The FAA has changed the listing of areas of operation as suggested.

In response to the comments addressed in the discussion of § 61.158 and for the reasons stated there, the FAA has placed additional paragraphs in this section concerning added ratings obtained substantially or entirely in flight simulation.

This section is adopted as amended.

§ 61.169 Instruction in air transportation service. This proposed section would require that ATP's giving instruction in Category II or Category III operations be trained and tested in Category II or Category III operations, as applicable.

Paragraph (a)(3) proposed that all instruction provided by ATP certificate holders be conducted in aircraft with functioning dual controls.

BAe, in a comment similar to several others, commented that proposed paragraph (a)(3) would allow an ATP to instruct only in aircraft with functioning dual controls, not in flight simulators or flight training devices.

Although the FAA did not specifically include simulation in this proposed section, the intent of this rulemaking is to provide for increased use of simulation wherever practical and where safety permits. Therefore, the FAA agrees that this paragraph should be revised to clarify that privileges of an ATP while instructing in air transportation service includes instruction in a flight simulator or flight

training device. A new paragraph (a)(2) has been added accordingly.

Proposed paragraph (b) continued the existing limitation that an ATP could not instruct in an aircraft for more than 8 hours in any 24-consecutive-hour period, nor for more than 36 hours in any 7 consecutive days.

Continental Airlines, FSI, and others commented that proposed paragraph (b) should specify that the instruction time limitations apply to aircraft only. These commenters specifically remarked that, with a briefing and debriefing session that each last for 2 hours, a simulator instructor's duty day may exceed 8 hours. FSI made the same comment in reference to §§ 142.49 and 142.87, and this proposed section.

Proposed paragraph (b) did not include simulation in the instructor's time limitation and simulator instruction would not have been permitted by the proposal. However, because the FAA has modified the proposal to allow simulator instruction, the FAA believes that duty time limitations should apply to both simulation and aircraft.

Further, flight instruction time limitations regarding preflight and post flight activities or briefings and debriefings have never been addressed. The FAA has determined that, in this final rule, it is appropriate to clarify that time spent performing these activities does not count toward the proposed flight instruction time limitations. Therefore, the words "excluding briefings and debriefings" have been added to paragraph (b) of this section in the final rule.

AMR commented that, by proposing time limitations, the FAA is mandating work rules, and that the FAA does not provide any justification for the arbitrary limitations imposed.

The proposed time limitations are not new; they have been contained in current § 61.169 for many years. The clarification to paragraph (b) discussed above should remove any confusion about not establishing new instructor duty times for simulation instruction.

SFI commented that this rule is archaic and attaches a privilege (instructing) to a certificate that demands neither training nor a demonstration of skill as an instructor. It continues that the rules applicable to instruction in air transportation service should be contained in part 61 and that specialized requirements for air transportation instructors should be contained in §§ 121.411 and 135.337, as appropriate.

In addition to holding an ATP certificate, persons who instruct in air transportation service in part 121 and part 135 must train, and in implementing guidance requirements as an instructor and demonstrate skill as an instructor, for the specialized application of air transportation service. The FAA is convinced that these requirements assure a level of safety for instruction equivalent to provisions of part 61, for privileges limited to air transportation service.

This section is adopted with the changes discussed above.

§ 61.187 Flight proficiency. As proposed, this section would permit an applicant for the flight instructor certificate to receive the required instruction for a flight instructor certificate in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the required instruction in anything other than an aircraft.

An overwhelming number of comments favored expansion of simulation to authorize its use for part or all of the instruction that flight instructor applicants are required to receive. Commenters objected, however, to the apparent requirement that all instruction must be received in an approved part 142 training center course. Several commenters, responding to the NPRM, suggested that the instruction permitted by this section be permitted for air carriers, part 141 schools, and holders of AQP or other authorizations.

The FAA does not agree. This option has been considered in detail in previous discussion of comments on §§ 61.56, 61.57, and 61.155.

Jeppesen-Sanderson, and other organizations representing part 141 and part 61 pilot schools commented, also in response to the NPRM, that a flight simulator could not do all the tasks in which a flight instructor must demonstrate competence.

The FAA agrees that this comment is true. The reason for extending the permitted uses for simulation to training and testing for the flight instructor certificate, even though simulation will not currently perform all the requisite tasks for that training and testing, is the same as discussed in the section-by-section discussion of § 61.56, regarding future use of simulators.

A wording error in NPRM Notice 92–10 resulted in the proposed rule text saying that an applicant for a flight instructor certificate must have received instruction in a accordance with an approved course at a training center certificated under part 142; the intention was to say an applicant may receive instruction in such a course. Therefore, the FAA announced in an SNPRM (FR 58 9514, February 19, 1993) that it had inadvertently proposed to require that all instruction in preparation for the airman practical test for this for this certificate be accomplished in a part 142 course, when it intended to propose that, as an additional option, the required instruction could be obtained in an approved flight simulator or flight training device, if that instruction is received during an approved course offered by a training center.

AOPA, in its comment to the SNPRM, expressed support for the changes proposed for this section.

One person, in response to the SNPRM, stated that he objected to a change that would allow simulation to be used to satisfy any flight time required for a flight instructor certificate. In his comment, he stated: "There * * * is no gain to be obtained * * * other than the cost reduction by the big companies."

The FAA believes that there are potentially significant cost benefits for all persons involved in aviation training, including individuals who may choose to use a training center for flight instructor training whenever it becomes available.

In addition, the FAA has determined that allowing the training and testing for a flight instructor certificate would result in additional safety benefits if accomplished in a simulator rather than in an aircraft.

After further analysis, the FAA believes that paragraphs (c)(2) and (c)(4), as they appeared in the SNPRM, are inaccurate, in that paragraph (c)(2) refers to a nonexistent flight instructor course meeting part 61, subpart G, requirements, and paragraph (c)(4) refers to a nonexistent flight instructor course under part 135. Additionally, paragraph (c)(3) is repetitive of other provisions of subpart G of part 61.

Therefore, the FAA has revised these paragraphs in the final rule.

This section is adopted with the corrections discussed.

§ 61.191 Additional flight instructor ratings. The FAA proposed to revise this section to permit an airman to accomplish the required practical tests for flight instructor ratings in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the practical test in anything other than an aircraft.

The comments regarding this section are essentially the same as those

submitted in response to proposed § 61.187. For the reasons discussed in response to proposed § 61.187, this section is adopted as proposed.

§ 61.195 Flight instructor limitations. This section proposed to require flight instructors giving instruction in Category II or Category III operations to be trained and tested in Category II or Category III operations, as applicable.

One commenter agreed with the proposal, but remarked that he would like a better definition of what the Category II and Category III training would be.

While development of such a definition is not the purpose of this rulemaking, testing requirements for these areas are described in §§ 61.67 and 61.68 and training should track the requirements of the appropriate test.

This section is adopted as proposed, with an added reference to § 61.68.

§ 61.197 Renewal of flight instructor certificates. The FAA proposed to amend this section to permit an applicant for renewal of a flight instructor certificate to conduct the required practical test in a flight simulator or flight training device in a course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the practical test in anything other than an aircraft.

In addition to the proposal stated above, the FAA inadvertently included certain other proposals in this section. The inadvertent proposals would have required medical qualifications for the renewal of a flight instructor certificate (proposed § 61.197(a)(1) and (a)(2)), permitted alternative methods of renewal of the certificate without accomplishing a practical test (§ 61.197(b)(1) and (b)(2)(iv), and prohibited the use of a flight instructor refresher clinic for more than two consecutive renewals of a flight instructor certificate (§ 61.197(c)). After publication in the **Federal Register**, the FAA realized that these proposals had been inadvertently included in the NPRM. The FAA proposed to correct the error in an SNPRM, Notice 92–10A, (59 FR 9514, February 19, 1993). In effect, the SNPRM proposed to restore the provisions of current § 61.197.

Over 200 comments were received concerning this proposed section as written in the NPRM; nearly all opposed the inadvertent proposals. However, a few comments were received concerning the proposal to allow an applicant to renew a flight instructor certificate by taking a practical test in flight simulation pursuant to part 142. These comments were generally favorable.

Ten comments were received concerning the revised proposals contained in the SNPRM. These commenters disagreed with the original proposals contained in the NPRM, which in fact made them comments in favor of the SNPRM. No comments were received that opposed the text as proposed in the SNPRM.

For the reasons discussed, this section is adopted as proposed in the SNPRM, except for deleting the words "in an aircraft" from proposed paragraph (d). That revision was necessary to avoid an inference that an applicant has to complete an approved course conducted by a part 142 certificate holder in order to take the practical test in an aircraft.

Appendix A to Part 61

The FAA proposed to change the title of appendix A to part 61 to read "Practical Test Requirements For Airplane Airline Transport Pilot Certificate and Associated Class and Type Ratings (For part 121 and part 135 Use Only)." This proposal was a companion change to the proposed change to § 61.157, since appendix A implements § 61.157.

Boeing, AIA, and Crew Systems had the same comment that they had concerning proposed §§ 61.63 and 61.64. Essentially, the comment was that the proposals appear to create two types of pilot certificates, one for part 121 and part 135 operations and one for all other operations.

The FAA response to this comment may be found by reference to the discussion of comments about proposed §§ 61.63 and 61.157.

Airbus commented that appendix A should be deleted, and that the provisions of proposed § 61.158 should be used instead. It adds that if appendix A cannot be deleted, it must be amended to accommodate modern aircraft.

The FAA agrees that appendix A has become somewhat obsolete. However, the deletion or updating of appendix A does not relate to the purpose of the proposed rulemaking upon which the final rule is based.

Therefore, in this final rule, appendix A is retitled, but otherwise unchanged. The deletion or updating of appendix A will be addressed as part of Phase II of the part 61 review which is referred to under the section entitled "Related Activity."

Integration of Appendix B to Part 61 Into Practical Test Standards

The FAA proposed to delete appendix B to part 61. FSI asked about the future of a document to replace appendix B.

The FAA does not plan to replace appendix B, as such. Instead, the FAA lists broad areas of aeronautical knowledge in several sections which specify requirements for various certificates and ratings. The specific tasks recommended for an airman to demonstrate competence in the broad areas of aeronautical knowledge are listed in implementing documents, such as the PTS.

Therefore, appendix B is deleted in this final rule, as proposed.

Part 91

§ 91.191 Category II and Category III manual. The FAA proposed to change the title of this section to include Category III manuals. The text of the proposed section sets forth the requirements for Category III manuals for civil aircraft conducting reduced visibility operations. These operations are defined as Category III operations elsewhere in part 91. Previously, there were no regulatory provisions applicable to part 91 operators who might anticipate Category III operations.

Airbus, in the only comment received, commented that part 91 is not mature enough to warrant regulatory action.

The FAA does not agree. Earlier in this preamble the FAA discussed the sophistication of aircraft operated under part 91, and the intent to not wait until a greater number of aircraft are capable of Category III operations before changing the rule to permit such operations under part 91. The FAA is convinced that it is time to amend part 91 to establish rules for reduced visibility operations.

AMR, in a general comment about the proposed changes to part 91, stated that the proposals to amend part 91 appear to be totally unrelated to the thrust of the NPRM.

The FAA believes that these proposals are related to the subject of the NPRM. Simulation is and will be used as a primary training vehicle for reduced visibility approaches. The NPRM proposed to require testing for those persons who will be authorized to conduct such approaches in a new § 61.68. The proposed changes to §§ 91.191 and 91.205 provide requirements for aircraft equipment and procedures for Category III operations, which did not exist previously.

The FAA has determined that, in order to allow time for compliance, persons desiring to obtain Category III

authorization should be given until August 1, 1997, to develop a Category III manual. Persons developing a Category III manual may use as general guidance Appendix A, modified as applicable, to address Category III Manual, Instruments, Equipment, and Maintenance. Because there will be few part 91 operators seeking Category III authorization, the FAA does not anticipate that development of Category III manual will impose a significant economic burden on a significant number of operators.

This section is adopted as proposed, except for a change to establish a separate effective date.

§ 91.205 *Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.* This proposed section included requirements concerning instruments and equipment for Category III operations.

Airbus made the same comment about this section that it made about proposed § 91.191.

The FAA response is the same as that set forth under § 91.191.

This section is adopted as proposed.

Part 121

The FAA received numerous comments from major airline associations and air carriers that a part 142 certificate should not be required to continue to provide training to employees of other part 121 or part 135 certificate holders. These commenters stated that parts 121 and 135 contain sufficient requirements for instructors, evaluators (check airman), and training program approval and that the FAA does not need to separately specify those requirements in a new part to 14 CFR (part 142).

After reconsideration of the proposal in light of these comments, the FAA agrees that parts 121 and 135 contain sufficient requirements for training, testing, and checking any aircrew subject to those parts. For that reason, the following proposed revisions to these sections of part 121 have been withdrawn: §§ 121.1, 121.401, 121.403, 121.405, 121.407, 121.432a, 121.439, and 121.441. Upon evaluation of comments received, the FAA has concluded that the proposed subparts of part 142 that were applicable to air carriers also were not needed and should be withdrawn. Therefore subparts F, G, H, and I, of proposed part 142 also have been withdrawn.

In addition, the proposed revisions to part 121, appendix H and appendix I have been withdrawn. Part 121, appendix H issues are being addressed under separate rulemaking, as discussed under the section of this document above entitled "Related Activity," and have, therefore, been removed from this final rule. The discussion below entitled "Part 142" explains the rationale for withdrawing proposed appendix I and all proposed sections relating to drug testing.

The FAA has determined, however, that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part. Operations conducted by these individuals are not sufficiently similar to those of certificate holders to warrant such an exception.

An air carrier interested in providing training, testing, or checking to such persons could modify its training program to suit the needs of those persons and meet the necessary requirements for a training program suitable for approval under part 142.

Operating and training environments of other operators are different from those for air carriers. For example, air carrier training on dispatch (flight release and flight following) and crew resource management (CRM) training that includes dispatch as a resource may not be appropriate for some operators. Therefore, for a part 142 program, a more extensive review of certain flight procedures is needed. Areas of training not common to all operators is further discussed in response to comments about §§ 142.1 and 142.3.

As discussed below, the following sections, §§ 121.400, 121.402, and 121.431, are retained for this final rule.

Subpart N—Training Program

§ 121.400 *Applicability and terms used.* Upon reconsideration of the ability of air carriers to train aircrews of other air carriers, the FAA has withdrawn most of this proposed section. However, the FAA will retain the definition of "training center" as proposed but will modify it to conform to the definition used under § 142.3 as adopted.

In addition, the FAA received a suggestion to add the term "requalification training" to the companion section in part 135 (§ 135.321). That term is already in common usage and is defined along with the terms defined in this section in FAA Order 8400.10, "The Air Transportation Operations Inspector's Handbook." Because requalification training is and will be accomplished in whole or in part by simulation, the FAA agrees that it should be defined in §§ 135.321 and 121.400. Accordingly, a definition of requalification training is added as paragraph (b)(7) of this section. The FAA further determined that it would be preferable to place the proposed definitions of "facility" and "courseware" only in part 142. Therefore, these definitions are deleted from this section.

§ 121.402 *Training program: Special rules.* The FAA proposed in this section that a part 121 certificate holder may provide training, testing, and checking services to others by contract. To provide training, testing, and checking for another part 121 certificate holder, the certificate holder would have been required to also hold a part 142 certificate and appropriate training specifications issued under part 142.

Several commenters said that the section is entirely a description of functions under part 142 and that it duplicates language in part 142.

The FAA agrees with the commenters that the description of functions proposed in this section duplicates a description of functions covered in part 142. Therefore, the FAA has revised this section in order to eliminate the duplication and to expressly allow part 121 certificate holders to use part 142 training centers to meet all or part of its training requirements if the POI approves that training.

NATCO stated that if each instructor, check airman, and evaluator can be shown to be qualified to fulfill the responsibilities, then a prerequisite for 1 year of employment should have no bearing on that person's effectiveness.

The FAA agrees. As mentioned in the section entitled "Related Activity" there is a separate rulemaking action underway, a final rule, to amend appendix H of part 121 accordingly.

After re-examination following analysis of comments, the FAA revised proposed § 121.402(a) to provide that a part 121 certificate holder may continue to provide training, testing, and checking to another part 121 certificate holder provided the training meets the requirements of part 121 and the POI of that receiving certificate holder approves that training.

The FAA further revised this section to indicate that the only entity, other than another part 121 certificate holder, that may provide training to a part 121 certificate holder is a training center certificated under part 142 of this chapter. This revision will ensure standardization and increase safety through the use of state-of-the-art training media that are inherent in training centers.

This section is adopted with the changes discussed.

Subpart O—Crewmember Qualifications

§ 121.431 Applicability. The FAA proposed to amend this section to permit training centers to provide testing and checking services by contract or otherwise to persons subject to the requirements of part 121.

Several similar comments were received which stated that the section would preclude part 121 certificate holders from providing training to other persons without being certified under part 142.

The FAA agrees that the commenters' analysis is true to the extent that a part 142 certificate will be required for training, testing, and checking offered to persons other than aircrew employees of another part 121 certificate holder.

For the reasons discussed earlier, this proposed section is deleted with the exception of the provision in paragraph (a)(2) permitting a part 121 certificate holder to contract with a part 142 certificate holder for all or part of the training required by part 121. Paragraph (a)(1) as adopted incorporates changes made to this section on June 14, 1996 (61 FR 30432). The section is adopted as revised.

Part 125

§ 125.285 Pilot qualifications: Recent experience. There were no comments concerning this proposed section. Therefore, it is adopted as proposed.

§ 125.296 Training, testing, and checking conducted by training centers: Special rules. The FAA proposed this new section to permit a crewmember to credit the training, testing, and checking received under part 142 toward the training, testing, and checking required by part 125.

AMR commented that training centers certificated under part 121, as well as those certificated under part 142, should be allowed to accomplish training, testing, and checking to satisfy this section.

As discussed earlier, there are no training centers certificated under part 121.

For the reasons in the general discussion of part 121 this section is adopted as proposed.

§ 125.297 Approval of flight simulators and flight training devices. There were no comments concerning this proposed section. Therefore, this section is adopted as proposed.

Part 135

As discussed above in part 121, the FAA received numerous comments from major airline associations and air carriers that a part 142 certificate should not be required for a part 121 or part 135 certificate holder to continue to provide training to other than its own employees. These commenters stated that parts 121 and 135 contain sufficient detail regarding requirements for instructors, evaluators (check airman), and training program approval and that the FAA does not need to separately specify those requirements in a new part to 14 CFR (part 142).

In general, the comments about the several new proposals or proposed revisions to existing sections of part 135 are very similar to those made in response to similar proposals in part 121. However, there were considerably fewer comments. Nevertheless, all comments received have been carefully reviewed and thoroughly considered.

In response to comments, the FAA has decided to allow a part 135 certificate holder to train the flight crewmembers of another part 135 certificate holder without being certificated under part 142. Like part 121 certificate holders, part 135 certificate holders must obtain a part 142 certificate in order to train persons who are not aircrew employees of another part 135 certificate holder.

The FAA agrees that parts 121 and 135 contain sufficient requirements for training, testing, and checking of aircrews subject to those parts. For that reason, the proposed revisions involving the following proposed sections of part 135 have been withdrawn: §§ 135.1, 135.292, 135.293, 135.297, 135.299, 135.323, and 135.325. Upon evaluation of comments received, the FAA has concluded that the proposed subparts of part 142 that were applicable to air carriers also were not needed and should be withdrawn. Therefore subparts F, G, H, and I, of proposed part 142 also have been withdrawn.

The FAA has determined, however, that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part. Operations conducted by these individuals are not sufficiently similar to those of certificate holders to warrant such an exception.

An air carrier interested in providing training, testing, or checking to such persons could modify its training program to suit the needs of those persons and meet the necessary requirements for a training program suitable for approval under part 142.

Operating and training environments of other operators are different from those for air carriers. For example, air carrier training on dispatch (flight release and flight following) and CRM training that includes dispatch as a resource may not be appropriate for some operators. Therefore, for a part 142 program, a more extensive review of certain flight procedures is needed. Areas of training not common to all operators is further discussed in response to comments about §§ 142.1 and 142.3.

As discussed below, the following sections, §§ 135.291, 135.321, and 135.324, are retained for this final rule.

Subpart G—Crewmember Testing Requirements

§ 135.291 Applicability. There were no comments about the proposed amendments to this section. However, the FAA decided to revise the section editorially slightly to more closely parallel § 121.431, which concerns the same subject. This section is adopted as revised.

Subpart H—Training

§ 135.321 Applicability and terms used. The FAA proposed to amend this section to make the requirements of subpart H of part 135 applicable to a training center if the training center provides training, testing, or checking by contract or other arrangement for a certificate holder subject to the requirements of part 135.

Several commenters remarked that this section should be left as currently worded.

The FAA has determined that certain terms should be added to better describe the training, testing, and checking required under this section.

AMR agreed with the section as proposed and suggested that it be expanded to include a definition of requalification training, which is already in common usage and which is defined, along with the terms defined in this section, in FAA Order 8400.10, "The Air Transportation Operations Inspector's Handbook."

Because requalification training is and will be accomplished in whole or in part by simulation, the FAA agrees that it should be addressed in this section. Accordingly, a definition of requalification training is added to paragraph (b) of this section, and the terms have been rearranged to accommodate this definition in its logical order. It should also be noted that the definition of "training center" used in this section is modified in the final as set forth in § 142.3 as adopted.

The FAA determined that it would be preferable to place the definitions of "facility" and "courseware" in part 142.

Therefore, these definitions are deleted from this section.

With the revisions discussed above, the section is adopted.

§ 135.324 Training program: Special rules. The FAA proposed this new section to permit a part 135 certificate holder to contract with a training center certificated under part 142 to satisfy the training program requirements of part 135.

The FAA also proposed in this section to permit a part 135 certificate holder to provide training, testing, and checking to others by contract. Under the proposal, to provide training, testing, and checking for another part 135 certificate holder, the certificate holder would have been required to hold a part 142 certificate and appropriate training specifications issued under part 142.

Under this final rule, a part 135 certificate holder may continue to provide training, testing, and checking to another part 135 certificate holder. A part 142 certificate will not be needed. The proposed section was revised further to indicate that the only entity other than another part 135 certificate holder that may provide training, testing, and checking to a part 135 certificate holder is a training center certificated under part 142.

The rationale for these changes may be found by reference to the general discussion of this part and § 121.402.

Several commenters said that the section is entirely a description of functions under part 142 and that it duplicates language in part 142.

The FAA agrees with the commenters that this subject is covered in part 142. However, the FAA considers it necessary to include provisions in this section expressly allowing a part 135 certificate holder to contract with a part 142 training center, if the part 135 certificate holder desires to use a part 142 training center for all or part of its training. This training meets the requirements of part 135 and the POI approves that training.

This section is adopted with the changes discussed.

Part 141

§ 141.26 Training Agreements.

No comments were received concerning this section, and it is adopted as proposed.

Broward Community College, Northwest Accelerated Ground School, and an individual made general comments that pilot schools will be placed at a disadvantage, apparently from not being able to take advantage of the capabilities of flight simulators.

The FAA's response to these comments may be found by reference to the discussion under §§ 61.65 and 61.109.

Part 142

As discussed above under parts 121 and 135, the FAA received numerous comments that a part 142 certificate should not be required for a part 121 or part 135 certificate holder to continue to provide training to other than its own employees.

After a review of comments received, the FAA has determined that part 121 and part 135 are adequate for air carrier training programs and the qualification and training of persons who present those training programs. For this reason, proposed subparts F, G, H, and I of part 142 that govern air carrier training, testing, or checking have been withdrawn.

As explained in the discussion of parts 121 and 135 above, however, the FAA has determined that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part.

A number of commenters also noted that the provisions regarding drug testing appear to be duplicative of requirements adopted since the publication of the NPRM, primarily in FAA's anti-drug rule, part 121, appendix I. The FAA concurs with these commenters.

Under part 121, appendix I, individuals who provide flight instruction, including simulator training, either directly or by contract for specified aviation employers, must be subject to an FAA-approved anti-drug program that includes all elements of proposed §§ 142. 21, 142.23, and 142.25. Similarly, these individuals must be subject to an alcohol misuse prevention program, including alcohol testing, under regulations published in 1994, found primarily at part 121, appendix J. The FAA has determined that these regulations adequately cover those individuals performing safety-sensitive functions. Therefore, proposed §§ 142.21, 142.23, and 142.25, and as discussed above part 121, appendix I, have not been adopted.

The FAA proposed § 142.11 entitled "Training center ratings." This proposed section would have required that, in addition to a training center certificate, a training center certificate holder would have had to obtain a rating to conduct each curriculum. The FAA has determined that ratings will not be necessary, since the subject matter that would have been addressed by ratings will be covered by training specifications. Accordingly, this proposed section has not been adopted as "Training center ratings." It has been adopted as "Application for issuance or amendment."

The FAA also proposed § 142.51, entitled "Qualifications to instruct in a flight simulator or a flight training device." Because the FAA simplified and consolidated instructor eligibility requirements into § 142.47 as adopted, § 142.51 is no longer needed and has not been adopted.

Lastly, in this final rule, all references to "training center certificate holder" have been replaced with "certificate holder" because the meaning is clear within the context of part 142.

Subpart A—General

This general subpart, subpart A, contains the requirements necessary to obtain and maintain certification as a part 142 training center.

§ 142.1 Applicability. This section, as proposed, specified the entities that would have to be certificated under part 142 to provide training, testing, and checking of flight crewmembers.

Boeing commented that the FAA should permit training centers operating under exemption and other means to be granted a "grandfather" certificate immediately. Other commenters were of the same opinion.

The FAA has allowed a 2-year period in order to accommodate applications for certification. Different training entities in operation now are structured to meet different regulatory standards. The time allowed for certification will permit current training entities to design training programs to meet part 142 standards. The FAA has determined that existing training programs approved for air carrier certificate holders and exemption holders should require only minor amendments to receive approval under part 142.

Accordingly, this proposed section has been revised by adding paragraphs (b)(4) and (5) to indicate that part 121 certificate holders may continue to train the flight crews of other part 121 certificate holders and that part 135 certificate holders may continue to train the flight crews of other part 135 certificate holders without obtaining a part 142 certificate.

A new paragraph (c) has been added to make it clear that training, testing, and checking in flight simulators or advanced flight training devices may only be conducted in accordance with part 142 certificate and training specifications. Exceptions are listed in paragraph (b).

This section is adopted with the changes discussed above.

§ 142.3 Definitions. This section proposed terms applicable to part 142.

AIA commented that this section would not allow airplane manufacturers the flexibility they enjoy today to revise training programs to accommodate customer-unique training needs.

The FAA believes that the definition of "specialty training" can accommodate any customer need, and was designed specifically to allow for subjects that are not generic.

ATA and several part 121 certificate holders commented that the definition of "core curriculum" is ambiguous and at odds with an air carrier POI's authority for approval of all components of an air carrier training program.

In this final rule, the FAA has more clearly and completely defined "core curriculum." The NPRM incorrectly referred to a "core training program." The definitions contained in this final rule now make a clear distinction between "training program" and "core curriculum." The FAA reiterates in this final rule that the POI is responsible for approving all training for the air carrier to which the POI is assigned.

ATA and others suggested that the term "Line Oriented Flight Training" (LOFT) be changed to "Line Operational Simulation" (LOS) to better accommodate special operational training.

The FAA agrees. The term "LOFT" has been retitled as LOS, which is defined in § 142.3. LOFT was consistent with the term in appendix H of part 121, but LOS and the new terms included in its definition are more descriptive and comprehensive, and they appear in certain AC's, particularly AC 120–35, "Line Operational Simulations; Line Oriented Flight Training, Special Purpose Orientation Training, Line Operational Evaluation," as amended.

Boeing and AIA commented that an evaluator need not be a pilot to certify certain training, such as ground training.

The FAA agrees with Boeing and AIA; however, such a restriction was not proposed. Under proposed § 142.55, a training center would have the flexibility to use someone without an airman's certificate to be an evaluator.

Airbus commented that the definition of "evaluator" is "too restrictive, narrow in scope, and inconsistent with the definition of evaluator contained in SFAR 58."

The FAA believes that the definition of "evaluator" now in this section is sufficiently broad to provide training centers with maximum flexibility for scheduling and personnel assignments. However, the proposed definition of "evaluator" has been reworded to make it clear that an evaluator may perform tests for authorizations and proficiency checks, when the evaluator is qualified under the applicable operational part, as well as for the test for certification and added ratings. While the definition of "evaluator" under part 142 is somewhat different than the definition of that term under SFAR 58, the FAA did not attempt to reconcile the definition with SFAR 58. Although different, the definition for "evaluator" contained in each of these parts adequately addresses the functions performed in these parts.

Boeing also commented that the proposed definition of "specialty training" could imply that FAA approval is required for training that is not required by any part of 14 CFR. Several other persons made similar comments in reference to other sections.

The FAA agrees with the commenters. The definition of "specialty training" has been reworded to exclude training not designed to satisfy the requirements for any FAA certificate, rating, authorization, test, review, check, or qualification.

Boeing and AIA also requested that the term "instructor" be defined throughout proposed part 142. They stated that airplane manufacturers and other training organizations use instructors for airplane, full-flight simulator, fixed-base simulator, and airplane systems training. They believe that it would be unreasonable and unnecessary to require a certificate to perform instructor duties other than for airplane and full-flight simulator flight instruction.

The FAA did not propose to require an instructor certificate for persons who would be employed by training centers to instruct in flight simulators or flight training devices. Further, since the publication of the NPRM, and in response to a petition from the public to amend existing exemptions, the FAA has allowed persons to qualify as simulator-only instructors without holding an instructor certificate, if those persons meet certain alternative qualifications. The FAA has determined that it is appropriate to include those alternative qualifications in this final rule. (See also the discussion below under § 142.47.)

With the changes discussed, this section is adopted as proposed.

§ 142.5 Certificate and training specifications required. This section proposed that no person may operate a training center without a training center certificate and training specifications, as described in part 142. Paragraph (b) further proposed that a training center certificate applicant would be issued a training center certificate and training specifications if the applicant complied with the applicable sections of part 142.

In the only comment received, AIA commented that a training center certificate should be optional if a training center is now operating under existing rules.

Prior to this amendment, there have been no training centers defined and regulated by 14 CFR. Training under previous rules is addressed in the initial discussion of part 142 above.

For the reasons discussed in the previous section, this section is adopted as proposed except for deleting a reference to § 142.77.

§ 142.7 Duration of a certificate. This section, as proposed, provided that a training center certificate would have no expiration date, but that it could be suspended, revoked, or otherwise terminated by the Administrator. Further, under paragraph (b) of this section, a certificate holder would have to return its certificate to the Administrator if that certificate is suspended, revoked, or terminated.

Jeppesen-Sanderson commented that the provision of no expiration date for a part 142 certificate should be extended to part 141 certificates as well.

The FAA believes that questions about the administration of part 141 that are not directly connected to training by simulation are best left to the review of that part. That review is discussed in the section entitled "Related Activity." Therefore, no changes are made to this section in response to the comment.

Comments made about proposed §§ 61.2 (adopted as § 61.3) and 142.20, which concern training centers located outside the United States, and other initiatives of the FAA, caused the FAA to change this section as it applies to training centers located outside the United States. Under this final rule, training centers located outside the United States will be issued a certificate which will expire annually. This revision is more thoroughly discussed under proposed § 142.20 (adopted as § 142.19).

This proposed section is adopted with the changes discussed.

§ 142.9 Deviations or waivers. This section proposed deviation and waiver procedures for a training center certificate holder or an applicant for a training center certificate.

Only one comment was received concerning this section. Professional Instrument Courses, Inc., stated that it does all its training by traveling to different airports around the country and that it uses an "apparent" flight training device instead of a flight simulator. It asked if the intent of the section entitled "Deviations and

waivers," is to allow affected companies to operate without facilities and without at least one flight simulator.

It was not the intent of this section to allow operation without facilities and at least one flight simulator or advanced flight training device. It was the intent to allow for unforeseen circumstances that may arise that may warrant a deviation or a waiver, as they have in the past with other rules. The scenario described by the commenter was not unforeseen and is specifically addressed by §§ 142.17 and 142.20 (adopted as § 142.19).

Accordingly, the section is adopted as proposed.

§ 142.11 (withdrawn) *Training center ratings.*

§ 142.13 (adopted as § 142.11) *Application for issuance or amendment.* Paragraph (a) of this section proposed that an application for a training center certificate be made on a form and in a manner prescribed by the Administrator. Proposed paragraph (a)(3) provides timeframes for processing applications.

In response to the requirement to submit an application to the FSDO with jurisdiction over the area in which the applicant's business office is located, Boeing asked if it would no longer be acceptable for it to file an application with the FAA Aircraft Evaluation Group (AEG) for part 121 training.

The FAA has determined that review and preliminary approval of certificate applications and training programs is more within the charter of FSDO's than AEG's. Accordingly, under this final rule, an application for certification under part 142 must be filed with the FSDO having jurisdiction over the area in which the applicant's training center is located.

Paragraph (b), as proposed, would require that each certificate application provide information about, but not limited to, each management position, facility, record, and curriculum of the training center. Paragraph (b)(1) proposed:

(b) Each application for a training center certificate and training specification shall provide—

(1) A statement showing that the minimum qualification requirements for each management position are met or exceeded.

Several commenters stated that proposed paragraph (b)(1) is redundant with proposed § 142.15.

The proposals were different in that proposed paragraph (b)(1) would require a statement that would have to accompany a certificate application, while proposed § 142.15 would require qualification of management personnel and a statement about adequate numbers of those persons.

In the final rule, however, paragraph (b)(1) has been reworded slightly in the interest of brevity and clarity.

Paragraph (b)(6) proposed:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

While no comments were received concerning evaluation plans, the FAA has decided to remove the reference to "evaluation plans" in order to simplify the application process and the quality control procedures to be used by the certificate holder. Separate evaluation plans would be largely redundant with features of a quality control system.

Paragraph (b)(7) proposed the following:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(7) A training program, including curriculum, syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B or subpart F of this part, upon request by the Administrator.

FSI commented that paragraph (b)(7) should be reworded to prevent the FAA from being inundated by materials accompanying an application for certificate. Boeing and Airbus made similar comments.

As suggested by commenters, the FAA has reworded paragraph (b)(7) to require submission of specified material only upon request of the Administrator.

Airbus commented that the text of § 142.13(b)(7) should be changed to improve clarity and to be consistent with FAA Order 8400.10, VOL 3, Ch 2, Sec 1. It states that the words "syllabus" and "syllabi" have unclear definitions in the context of crewmember training programs and were, for that reason, not used in the 8400.10 definitions.

To promote clarity, the FAA has revised several terms pertaining to training programs. The revised terms are, to the extent possible, consistent with the definitions contained in the order that the commenter cites. The term syllabus, however, is retained. The FAA believes that the generic definition of that word adds clarity to the training program requirements.

Paragraph (b)(10) proposed the following:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

Boeing and AIA commented that paragraph (b)(10) should be made consistent with SFAR 58.

The FAA believes that this paragraph is consistent with SFAR 58. This paragraph refers to § 61.109 and other sections of part 61 that specify minimum hours of aeronautical experience that a part 142 certificate holder may wish to reduce further in non-traditional courses other than AQP.

United commented that "to require United, or any other (part) 121 certificate holder similarly situated, to duplicate all of its facilities, equipment, courseware and personnel in order to continue training by contract or other arrangement and then have the FAA inspect and approve the requirements..." is not conserving resources.

The FAA did not intend to require duplication of facilities and equipment. The buildings, classrooms, flight training equipment, and instructors may be the same that are used in pursuit of normal business in accordance with a part 121 or part 135 certificate. Some training programs offered to persons other than aircrew employees of another air carrier may be essentially the same as programs now in use. With minor modification, training programs can be presented under a part 142 certificate to persons other than air carrier certificate holder employees. ATA and several part 121 certificate holders had concerns similar to United in their comments to proposed § 142.17. The FAA addresses their comments in the discussion below under proposed § 142.17.

Paragraph (c) proposed that facilities actually be in place at the time of application, and not simply planned or expected.

Several commenters stated that this would be an unduly burdensome expenditure for equipment too far in advance of its use, especially for new entrants into the training industry.

The FAA agrees that facilities need not already be in place at the time of application. This paragraph has been reworded to require that facilities and equipment be available for inspection and evaluation prior to approval. This will preclude expenditure of FAA resources on frivolous or tentative plans that may never come to fruition due to

changed business plans. It will permit the FAA to evaluate actual facilities rather than those that are merely planned and subject to later change. The FAA believes that such measures are necessary in order to conserve public resources and in order to maintain the highest standard of facilities in training centers. Paragraph (d)(2) proposed:

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

* * * * *

(2) Training specifications, issued by the Administrator to the training center certificate holder, containing—

(i) The type of training authorized, including—

(A) Training center ratings; and

(B) Approved courses;

(ii) The category and class of aircraft that may be used for training;

(iii) Registration numbers and types of aircraft that are—

(A) Subject to an airworthiness maintenance program required by parts 91, 121, 125, 135, or any other parts of this chapter; and

(B) Suitable for the type of training, testing, or checking being conducted;

(iv) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(v) For each flight simulator and flight training device subject to qualification evaluation by the National Simulator Program Manager, the serial number assigned by the manufacturer;

(vi) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vii) Authorized deviations or waivers from this part; and

(viii) Any other items the Administrator may require or allow.

Several air carrier operators, commenting on proposed paragraph (d)(2), stated that training specifications would not be convenient, and that courses approved under parts 121, 135, or 142 would provide all the course specification that is required.

Based on prior experience, the FAA believes that many administrative matters not concerning course specification have been accommodated very well by the use of operations specifications for air carrier operators. This is a new concept for training entities, but experience with similar operating specifications issued to air carrier certificate holders has shown that the procedure will allow maximum administrative convenience. Especially in light of the removal of the proposed requirement for ratings for training centers, the FAA concludes that providing for training specifications is administratively wise. As stated previously in this preamble, a part 142 certificate (and attendant training specifications) will not be required for part 121 certificate holders to train other part 121 certificate holders or for part 135 certificate holders to train other part 135 certificate holders. Therefore, training specifications will be applicable to air carrier certificate holders only if those certificate holders choose to apply for a part 142 certificate.

For the reasons stated, § 142.13(d)(2) is adopted as proposed and renumbered as § 142.11(d)(2).

FSI commented that proposed paragraph (d)(2)(iii) would preclude short-notice change of aircraft and the use of customer-owned aircraft unless there is a 1-day change notification procedure. Airbus made similar comments about aircraft to be used by aircraft manufacturer training centers.

The FAA agrees that the proposal may be too restrictive on certain potential training centers, including aircraft manufacturer training centers, which might offer training in aircraft rather than in a flight simulator or flight training device. Therefore, proposed paragraph (d)(2)(iii) has been deleted. Proposed paragraphs (d)(2)(iv) through (d)(2)(viii) have been redesignated as (d)(2)(iii) through (d)(2)(vii).

Regarding proposed paragraph (d)(2)(vi), Boeing commented that the proposed requirement to list the name, address, and courses approved for each satellite training center would preclude "offload training."

The FAA does not agree that these proposed requirements would preclude the training to which Boeing referred. The proposal does not prevent training at sites other than the training center location or satellite training center location, as long as a training center or satellite training center of the certificate holder complies with the certification requirements of part 142. Therefore paragraph (d)(2)(vi) is adopted as proposed; however, since proposed paragraph (d)(2)(iii) has been deleted, proposed paragraph (d)(2)(vi) is adopted as paragraph (d)(2)(v).

The FAA has decided that effective reference to and tracking of simulation equipment requires the use of FAA-assigned identification numbers for that equipment instead of serial numbers assigned by the manufacturer of such equipment. Accordingly, proposed paragraph (d)(2)(v) has been reworded to reflect this requirement and is adopted as paragraph (d)(2)(iv).

Paragraph (e) proposed the following:

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that—

(1) Any certificate the Administrator previously issued to the applicant for, or holder of, a training center certificate, was revoked, suspended, or terminated within the previous 5 years;

(2) An applicant for, or holder of, a training center certificate employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

STI commented that proposed paragraph (e)(2)(i) should be modified to specifically state that the management or supervisory person formerly worked in a management or supervisory position for a certificate holder whose certificate had been revoked, suspended, or terminated within the previous 5 years. FSI also suggested that proposed (e)(2)(i) be linked with subparagraph (e)(2)(ii) with an "and" at the end of (e)(2)(i).

The construction of proposed paragraph (e) means that the conditions of (e)(2)(i), (e)(2)(ii), and (e)(2)(iii) all apply to persons that a training center employs or proposes to employ. These three paragraphs are linked together by the semicolons and the "and" following (e)(2)(ii). It is not necessary to repeat the "and" after (e)(2)(i). To correct an editorial error in the proposal, the FAA has inserted the word "or" to appropriately separate paragraphs (e)(1) and (e)(2).

This section is renumbered as § 142.11 and adopted with the several changes discussed.

§ 142.15 (adopted as § 142.13) *Management and personnel requirements.* The FAA proposed in this section that a training center must show that it has and maintains a sufficient number of qualified instructors, evaluators, and management personnel competent to perform required duties.

Only one comment was received concerning this section. That comment stated that this section was unnecessary and should be deleted.

The FAA has determined that the proposal referred to above is necessary to ensure that a training center can operate in compliance with the certification provisions contained in proposed part 142. The FAA needs this information, along with the other information required by this part, to

approve applications for certification under part 142. Therefore, this section is renumbered as § 142.13 and adopted as proposed.

§ 142.17 (adopted as § 142.15) *Facilities.* In this section, the FAA proposed the following in paragraph (b):

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that—

(1) Has a mailing address in the name shown on its training center certificate application, or training center certificate, after it is issued; and

(2) Has facilities adequate to maintain the records required by this part.

(3) Is not shared with another certificate holder; however, automated recordkeeping systems approved by the Administrator may be shared by more than one training center or certificate holder.

This paragraph would require a training center to establish and maintain a principal business office that could not be shared with a part 121, 135, 141, or 142 certificate holder. The intent of this paragraph was to ensure that the principal business office of a training center is located at a permanent physical location with the characteristics of an ordinary business office. It was intended to preclude the use of transient locations with inadequate facilities for properly maintaining records.

The FAA proposed this paragraph to preclude certain difficulties with commingled records or with changing standards for some students of training entities offering training under more than one part of 14 CFR. Commingling is considered undesirable because different standards apply to entities certificated under the several 14 CFR parts. However, upon reconsideration, the FAA does not believe that proposed paragraph (b)(3) is necessary because the FAA can prevent the commingling of records by better guidance on recordkeeping requirements and special emphasis on surveillance and inspection of that recordkeeping. Therefore, the proposed restriction has been deleted.

Paragraph (b)(2) of § 142.17 proposed that records required by part 142 must be kept at a principal business office. This proposed requirement was to permit the FAA to locate and periodically review records in order to determine compliance with part 142 standards.

AMR commented that the recordkeeping location requirement in proposed paragraph (b)(2) would work only where the principal business office and the training facility are co-located, and in no case would it be workable for a satellite training center.

The FAA has considered AMR's comment and has revised proposed paragraph (b) accordingly to provide that records may be kept where training or testing takes place.

Under the NPRM, training centers certificated under part 142 would be permitted to provide ground instruction as well as training in flight simulators, flight training devices, and aircraft; however, in order to be certificated under part 142 paragraph (d) proposed that a training center applicant, in effect, would be required to "have exclusive use of" at least one FAA-approved flight simulator.

Several comments had to do with sharing of training facilities or flight simulators by several arrangements between the sharing parties.

FSI, several part 121 certificate holders, and the Regional Airline Association (RAA), commenting on proposed paragraph (d) stated, that the proposed requirement to have "exclusive use of" at least one flight simulator would preclude "dry leasing" of flight simulator time.

For the purposes of this section, the FAA intended that the term "exclusive use" include "dry leasing." The FAA recognizes that "dry leasing" is a normal practice in the industry, and that its continuation is essential to the industry for at least the foreseeable future. However, for clarity, the wording of this provision has been revised to require that the training center have the flight training equipment "available exclusively" for adequate periods of time. This is to distinguish the requirements of this section from other "exclusive use" requirements of other regulations, which may not include "dry leasing." It should be noted that the FAA did not propose to prohibit sharing of flight training equipment. In fact, the FAA anticipated that such sharing would be likely. Therefore, the FAA has revised proposed paragraph (d) by adding the words "available exclusively for adequate periods of time."

A few commenters, also commenting on proposed paragraph (d), recommended that the proposal to have readily available at least one flight simulator as a prerequisite to apply for a part 142 certificate be clarified in the rule language. Gateway Technical College commented that institutions such as theirs are unable to afford to own or lease a flight simulator, but that they are able to provide a needed service by use of flight training devices only. Gateway and Broward Community College suggest that the FAA allow a "low-end part 142 school" or a limited part 142 certificate.

The FAA believes that flight training in aircraft and in flight training devices is adequately covered by part 141 pilot schools and that the primary emphasis of part 142 training centers will be training with flight simulators. However, the FAA believes that essentially equivalent training can be accomplished by use of advanced flight training devices that represent a specific aircraft in cockpit configuration, function, and flight handling characteristics when those flight training devices are supplemented with training in the same type aircraft. Advanced flight training devices with those characteristics are currently qualified by the FAA as Level 6 and Level 7 flight training devices. Therefore, proposed paragraph (d) has been reworded to permit an applicant to obtain a part 142 certificate if it has an advanced flight training device.

In an apparent comment to proposed § 142.17 (d), ATA and several part 121 certificate holders commented that this section would "require a part 121 certificate holder...to purchase duplicate simulators, CBT stations, training aids, and other training devices for use in the part 142 school even if its part 121 devices are not 100% utilized and (are) available for contract training."

As also discussed above under proposed § 142.13 in response to a comment from United, the FAA did not intend to require duplication of flight training equipment. The commenters may have interpreted proposed paragraph (d) to mean that the exclusive use provision of proposed § 142.17 (d) could require some duplication. The FAA did not intend for air carriers to needlessly duplicate existing equipment. It only intended that the training center have exclusive use of the equipment for the period of time that is needed. As stated above, the FAA has revised proposed paragraph (d) to state that the facilities must be available exclusively for adequate periods of time to complete the required training, testing, or checking. Therefore, the duplication described by the commenters is not required.

TWA commented that the proposals in this section implied two different standards for aircraft type ratings - one for part 142 training centers and one for part 121, 135, and 141 certificate holders.

TWA, and other commenters, also raised this issue in comments to § 61.63. The FAA disposed of comments on added type ratings in the section-by-section analysis of § 61.63. In this discussion, the FAA explains that there are not two different standards for

airman performance for an added type rating.

This proposed section has been changed as indicated above, has been renumbered as § 142.15, and is adopted with the changes discussed.

§ 142.19 (adopted as § 142.17) *Satellite training centers.* This section proposed that training centers would be permitted to establish satellite training centers.

Boeing and AIA commented that some provision should be made for training in remote areas.

Although part 142 provides for training centers and satellite training centers, the FAA does not intend to prevent training at sites other than the training center location or satellite training center location. Such training is permissible if the training center or satellite training center of the certificate holder complies with the requirements of part 142 relating to that remote training. The FAA will provide for training at remote sites through the training specifications.

AMR asked if a satellite training center also would have to have a flight simulator, its own principal business office, and if the parent training center's instructors could instruct at both a training center and at a satellite training center. It stated that there is an inference that a satellite training center would have to apply for a certificate, but that proposed § 142.19 would not require a certificate for a training center. It suggested that only the main training center hold a certificate.

The FAA agrees. The FAA proposed that only the principal training center must hold a training center certificate and this proposal has not been changed in the final rule.

The discussion of this section in the NPRM indicated that a satellite training center would have to have at least one simulator and the other facilities required by this part. However, it should be noted that proposed § 142.17 has been revised in response to comments to allow a person with an advanced flight training device (i.e., a Level 6 or Level 7 flight training device) to apply for a training center certificate. Thus, a satellite training center would be permitted to operate with such a device in lieu of a flight simulator.

A satellite training center need not have separate management personnel. It does not have to have a separate principal business office. Instructors and evaluators may work at more than one training center or satellite training center, provided those persons meet the requirements of part 142, as required by proposed § 142.19 (a)(2), which is adopted as § 142.17 (a)(2) in the final rule.

See the discussion of the following section for restrictions on satellite training centers located outside the United States.

This section is renumbered as § 142.17 and adopted by revising proposed paragraph (a)(2) to better clarify the location of the supervisors.

§ 142.20 (adopted as § 142.19) *Foreign training centers: Special rules.* The FAA proposed, under § 142.20, that a training center or satellite training center may be located outside the United States only if it is in a location approved by the Administrator. This section further proposed that a training center or satellite training center located outside the United States may issue U.S. pilot certificates to U.S. citizens only but may add ratings, authorizations, and endorsements to all pilot certificates issued by the FAA.

Three comments were received concerning this proposed section.

FSI asked what authority the FAA has to approve or deny locations of training centers outside the United States, since the Departments of Commerce, Defense, and State have jurisdiction over this matter.

The FAA is withdrawing its proposal to approve the location of training centers outside the United States. It is sufficient to set the standards for certification of training centers located inside and outside of the United States. Therefore, proposed paragraph (a) has been amended to remove references that the Administrator must approve the location of training centers outside the United States. Further, paragraph (a), as adopted, specifically states that certificates for training centers outside the United States are issued at the discretion of the Administrator.

AMR commented that this section seems to ignore the possibility of part 121 and part 135 initial and recurrent checks being conducted at a foreign training center.

The FAA agrees that those areas need to be specifically addressed. (See also the § 61.2 (adopted as § 61.3) discussion related to this matter.) A new paragraph (c) has been added to this section to make explicit the authority of foreign training centers to conduct proficiency checks, pilot reviews, recency of experience requirements, SIC qualifications, and other training subject to approval of the Administrator.

AIA commented that this section seems to imply that all foreign training centers must be approved by the FAA.

As indicated above in response to FSI's comment regarding approval of the location of training centers, the FAA has amended proposed paragraph (a).

In paragraph (b), the FAA proposed that a training center or satellite training center located outside the United States may issue U.S. pilot certificates to U.S. citizens only but may add ratings, authorizations, and endorsements to all pilot certificates issued by the FAA when approved to do so.

Proposed paragraph (b) is revised in this final rule to remove the reference to satellite training centers located outside the United States.

The FAA has made editorial changes to this section to make it clear that a training center may prepare and recommend applicants for certificates and ratings, but may not actually issue a certificate or rating without authorization to issue a specific kind of certificate or rating.

Also, the FAA proposed, in § 142.7, a permanent certificate. The certificate could have been suspended or terminated, but would not require renewal. The objective of this proposal was to simplify paperwork and reduce the workload for the FAA and applicants. However, the FAA has determined that there is a need to provide for periodic renewal of a certificate for those training centers outside the United States in order to ensure adequate safety oversight. Other air agencies outside the United States, such as repair stations certificated under part 145, have annual renewal requirements.

This section is renumbered as § 142.19 and adopted with the changes discussed.

§ 142.21 Prohibited drugs. Reserved. See the discussion above entitled "Part 142."

§ 142.23 Testing for prohibited drugs. Reserved. See the discussion above entitled "Part 142."

§ 142.25 Refusal to submit to a drug test. Reserved. See the discussion above entitled "Part 142."

§ 142.27 Display of certificate. No comments were received concerning this proposed section. Therefore, it is adopted as proposed.

§ 142.29 Inspections. This proposed section would require training centers to permit inspections by the FAA at reasonable times and places.

AMR made some suggestions for essentially editorial changes.

This section was adopted as proposed, with the small editorial changes suggested by the commenter.

§ 142.31 Advertising limitations. This section proposed to restrict training center advertising to that training that has been approved by the Administrator.

Boeing and AIA commented that the proposal would restrict it from offering non-FAA approved training to non-U.S. customers. Several air carrier certificate holders commented that the proposal would preclude the conduct of training not under the jurisdiction of the Administrator, such as training for foreign corporations that would meet the requirements of that foreign country. Others commented that some training centers might want to offer training in ancillary subjects that are not required by any part of 14 CFR. Commenters offered first aid, maintenance technician procedures, and meteorology as examples.

The FAA agrees that the proposed advertising limitations should be reworded to provide for circumstances such as those described by the commenters. Therefore proposed paragraph (a) has been revised to indicate that this section applies to training that is designed to satisfy any requirement of 14 CFR. Any training offered by a training center that goes in whole or in part to satisfying a requirement of 14 CFR must be approved. Training for other purposes need not be approved. Training that is not specifically approved by the FAA may not be advertised as FAA approved.

Andrews University asked whether this section would preclude a part 142 training center from operating under part 61. It suggested that training centers should be allowed to operate under part 61.

Part 61 is not considered an "operating" part of 14 CFR. Training centers certificated under part 142 will train to meet the requirements of part 61, among other parts. A training program or curriculum approved for presentation under part 142 may not be presented to meet the requirements of part 61 without a part 142 training center certificate.

This section is adopted as revised.

§ 142.33 Training agreements. No comments were received concerning this proposed section. Therefore, it is adopted as proposed.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability. This section specifies that the training programs described by this subpart apply to that segment of aviation frequently called "general aviation" that operates under part 91, and that is not required by regulation to have a training program.

Airbus commented that this subpart is not applicable to training provided "by part 25 aircraft manufacturer's training centers to its employees, U.S. certificated employees of the aircraft manufacturer, and FAA air carrier inspectors."

This subpart applies to all training center activity except that provided by a part 121 certificate holder to another part 121 certificate holder or by a part 135 certificate holder to another part 135 certificate holder, unless the certificate holder providing such training chooses to become a part 142 certificate holder.

This section is adopted as proposed.

§ 142.37 Approval of flight aircrew training program.

The FAA proposed, in proposed paragraph (c)(1), that training programs submitted for approval specify which courses are part of a specialty training curriculum. Core curricula and specialty curricula are defined in § 142.3.

Proposed paragraphs (c)(2) and (3) require applicants, when filing an application for training program approval, to indicate which requirements the training program curriculum will satisfy and which requirements the training program curriculum will not satisfy.

AMR commented that the proposed provision of § 142.37 (c)(1) needs clarification. In simplest terms, it states, not every course must be designed to accomplish all the learning objectives required for every practical test.

ATA and several part 121 certificate holders commented that proposed paragraph (c)(1) does not make clear what constitutes an approved training program. They cite the detail of § 121.424 and appendix H of part 121 as examples of training program detail for the ATP certificate and airplane type rating. They state that it appears that an approved training program for a particular certificate or rating would consist of the maneuvers, procedures, and exercises required for the certification practical test.

The FAA agrees with the commenters about training to meet the requirements of the PTS. The areas of aeronautical knowledge for each certificate and rating are listed in the applicable section of part 61. The PTS lists the tasks, conditions, and standards of performance for all certificates and ratings. Currently, the PTS, inspector's handbooks, appendix A of part 61, and appendices E, F, and G of part 121 list maneuvers and procedures for a curriculum for only the ATP certificate and airplane type rating. Guidance on the content, style, and length of all written tests is in other documents. Other considerations to include in a training program are listed in handbooks, advisory circulars, and in other FAA publications. Section 142.37(d) outlines the general requirements for a training program. It is not necessary and not practical to put all details in 14 CFR.

FSI commented that, since paragraph (c)(2) requires an applicant for each curriculum approval to indicate which requirements of part 61 would be satisfied, the requirement in paragraph (c)(3) is redundant.

The FAA believes that both paragraphs are needed to help ensure that no requirement goes unaddressed by oversight or by assuming that the requirement will be met in some other way.

In a general comment to this section, ATA and other commenters stated that they "would strongly object to any attempt by the FAA to impose additional requirements or restrictions not related to training as a condition of (approval of a training program)." They state that they would object on the grounds that the public was not given an opportunity to comment on requirements imposed administratively.

The commenters did not provide information on their specific concerns; however, the FAA agrees in general that additional requirements unrelated to training should not be imposed without opportunity for public comment.

This section was amended by making minor editorial changes and by adding a new paragraph (b) and rearranging other proposed paragraphs. The FAA determined that a new paragraph (b) is needed to make clear that curricula approved under SFAR 58 are approved without modification for use in this part.

The section is adopted as revised.

§ 142.39 Training program curriculum requirements. This section proposed that each training program curriculum submitted for approval would have to contain a syllabus, minimum flight training equipment requirements, and minimum instructor and evaluator qualifications for each proposed curriculum. However, for AQP, the FAA proposed that approval of a curriculum under SFAR 58 would, for an applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in § 142.39.

Airbus commented that the section should be restructured to provide for initial and final approval of training program curricula.

Different stages of initial and final approval are specifically not a feature of part 142. After determining that a proposed training program meets all applicable requirements, the

Administrator will approve the training program. If approval of a training program curriculum proves to have been inappropriate, the Administrator may use the authority of §§ 142.7 or 142.13(e) to suspend or revoke a certificate. The intention is to simplify the application and approval process. For the reason stated, this section is not revised to include a provision for initial and final approval stages.

Paragraphs (c) and (d) of this section proposed that each curriculum submitted for approval must include:

(c) Minimum instructor and evaluator qualifications for each proposed curriculum;

(d) A curriculum for initial training and continuing training of each instructor or evaluator employed to instruct in a proposed curriculum.

United commented that paragraphs (c) and (d) are not required and are overly burdensome for part 121 certificate holders.

The FAA believes that these paragraphs are necessary controls, and that presenting the instructor and evaluator qualifications to the FAA at the time of application for a part 142 certificate and changes to its curriculums would cause almost no additional burden to a part 121 certificate holder. It is even likely that existing documentation for these positions could be used in its existing format. The FAA has determined that these paragraphs should be adopted to ensure that instructors meet, and maintain, the skills considered essential for properly instructing their students.

Paragraph (e) proposed:

(e) For each training program that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter—

(1) A means of demonstrating the ability to reduce the minimum hours prescribed in part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter; and

(2) A means of tracking student performance.

Boeing and AIA commented that proposed paragraphs (e)(1) and (2) do not allow credit for previous experience in similar aircraft "per AC 120–53."

Paragraph (e) is directed to those hours which are specified in part 61, as stated, and has no impact on AC 120–53.

ATA and several part 121 certificate holders commented that the tracking required in proposed paragraph (e)(2) would be a costly and near-impossible task, that data would be sparse, and would not necessarily validate success or failure of the attempted program.

As discussed also in § 61.109, the intention of allowing a further reduction in the minimum hours of aeronautical experience is to allow maximum flexibility to a training center to develop, at some future date, innovative curriculums that might adequately train for a specific certificate or rating in fewer than the current minimum number of hours. In order to gain the privilege of further reducing minimum training hours, a training center will be required to demonstrate that it can provide proper training in fewer hours. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. A training center would have to present historical data covering at least 1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

In a general comment to this section, TWA pointed out that the requirement for a letter of authorization did not appear in the proposed rule text.

The FAA did not intend to propose such a requirement. The NPRM preamble mistakenly stated that proposed paragraph (a)(4) would require a training center to issue annually a letter of authorization to each instructor for each course that instructor may teach. The final rule does not adopt such a requirement.

The FAA has reworded the reference to a curriculum, which appeared in this proposed section to instead reference a curriculum containing a syllabus to indicate that a curriculum is implemented by a syllabus. This editorial change is to maximize standardization with training program terms already in use and widely accepted.

This section is adopted with the changes discussed.

Subpart C—Personnel and Flight Training Equipment Requirements

This subpart contains instructor and evaluator eligibility requirements, addresses instructor and evaluator privileges and limitations, and addresses instructor and evaluator training, testing, and qualification for training programs approved under subpart B. This subpart also contains rules governing flight training equipment requirements.

§ 142.45 Applicability. This proposed section sets forth the personnel and equipment required for training that is to meet the requirements of part 61.

Airbus commented that this section should be restructured to exempt employees of the training center, U.S. certificated employees of the aircraft manufacturer, and FAA inspectors.

The FAA does not agree. The persons cited by the commenter are required to meet the training and certification requirements of part 61.

AMR commented that the proposal does not make clear whether an instructor or evaluator would be subject to the proposed requirements contained in both subpart C and subpart G of this part. It states that current training center practice is to use instructors to teach pilots who operate under various parts of 14 CFR.

Because the FAA has decided to delete proposed subpart G, the commenter's question is academic in this instance. However, an instructor or evaluator may instruct non-air-carrier customers and air carrier customers if the instructor or evaluator is otherwise qualified and designated by the training center to perform both functions.

With editorial changes for clarity and brevity, this section is adopted as proposed.

§ 142.47 Training center instructor eligibility requirements.

To make as many qualified instructors as possible eligible, the FAA proposed in paragraph (a) of this section that training center instructors meet only one of the following standards: Hold at least a commercial pilot certificate with an instrument rating; at the time of accepting employment, be currently qualified to instruct under part 121 or part 135; or hold a ground instructor certificate with instrument rating and meet at least the commercial pilot aeronautical experience requirements.

ATA and several other part 121 certificate holders commented that the words "at the time of accepting employment" in proposed paragraph (a)(3)(ii) was too restrictive and might preclude the hiring of some otherwise well-qualified potential instructors.

The FAA agrees with the commenters. Accordingly, this paragraph has been revised to provide that instructors may qualify for designation by training centers within 2 years of having been qualified and current to instruct for a part 121 or part 135 certificate holder in the type airplane in which the instructor

is to be designated by the training center.

ATA and others also commented that ATP certificate holders should be able to instruct others without holding any other certificate.

The FAA does not believe that the holder of an ATP certificate should be permitted to instruct persons by virtue of holding the ATP certificate, except in air transportation service as authorized by § 61.169 of this chapter. The authority of § 61.169 does not extend to instructing other airmen to qualify for the ATP certificate or instructing other holders of an ATP certificate for added ratings, except within the narrow and specific instance of instructing in air transportation service.

Moreover, in response to these commenters, the FAA has determined that instructor qualification requirements of part 142 are at least equivalent to the knowledge and skill requirements for a ground instructor certificate regardless of whether the instructor holds an ATP certificate. Accordingly, the FAA has deleted paragraph (a)(3). Other provisions of proposed paragraph (a)(3) have been moved to other paragraphs.

AMR commented that training centers should be permitted to employ persons who are not pilots to be instructors, such as maintenance instructors, and that the rule language should address that possibility.

The FAA agrees and paragraph (a) has been reworded to make it clear that the requirements of the section, and the subpart, apply only to persons who are employed as instructors in a flight training course that is subject to approval of the Administrator, as discussed under § 142.31. The FAA stated in the discussion of that section that any training offered by a training center that goes in whole or in part to satisfying a requirement of 14 CFR must be approved; however, training for other purposes need not be approved.

Paragraph (b) proposed the following:

(b) A training facility operating under an exemption to part 61 prior to August 1, 1996 may allow a person who has been employed as a simulator instructor for that training facility to continue to instruct provided the training facility—

* * * * *

(ii) Instructs only in qualified and approved flight simulators in which that person has been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

AIA commented that paragraph (b)(2)(ii) does not allow existing instructors to transition to new equipment without complying with the new part 142 instructor qualification provisions. It states that the proposal is too restrictive and recommends that it be deleted.

AIA is correct in its interpretation that instructors transitioning to new equipment must comply with part 142 instructor qualification provisions. As an exception, proposed paragraph (b)(2)(ii) (revised and adopted as paragraph (a)(6)(iii)) is a "grandfather" provision only for persons who are employed as simulation instructors on the effective date of this final rule and who instruct only on the same equipment. Those persons who do not meet the instructor qualifications of part 142 will not be allowed expanded instructor privileges unless the instructor applicant meets the standards prescribed by part 142.

FSI commented that proposed paragraph (b)(2)(ii) (revised and adopted as (a)(6)(iii)) should be reworded to grandfather privileges of instructors in approved flight training devices as well as privileges in flight simulators.

The FAA agrees with this recommended change because instructors will be using simulation media, not just flight simulators. Proposed paragraph (b)(2)(ii) has been reworded accordingly and, as indicated above, is adopted as new paragraph (a)(6)(iii).

AMR commented that this section indirectly requires a training center instructor to hold at least a second class medical certificate.

This is not a correct interpretation of the proposal. The alternative requirements for instructors that are outlined in preceding paragraphs provide for a training center to employ instructors in simulation only who do not hold an airman medical certificate.

Since the publication of the NPRM, and in response to a petition from the public to amend existing exemptions, the FAA has allowed persons to qualify as simulator-only instructors without holding an instructor certificate, if those persons meet certain alternative qualifications. The FAA has determined that it is appropriate to include those alternative qualifications in this final rule; therefore, this section has been restructured accordingly. The alternative qualifications will allow training centers to employ as instructors persons who are former military pilots, former or current airline pilots, and other persons who may not hold an instructor certificate. Instructors who instruct in a required crewmember seat in flight must hold a flight instructor certificate with appropriate ratings and an airman medical certificate. The alternative qualification requires a training center to train a potential instructor in specified subjects, and to administer a written test following the instruction. The written test must be approved as a part of the training program. The test must be of similar complexity, difficulty, and scope as the written test for flight instructor airplane and instrument flight instructor. Training center certificate applicants and training centers may consult publication FAA–T–8081–18, *Flight and Ground Instructor Written Test Book* for guidance in developing the written test. The FAA does not intend that the test include questions about flight maneuvers such as turns about a point, chandelles, and spins.

This section is adopted with the changes discussed.

§ 142.49 Training center instructor privileges and limitations. This section proposed that, to instruct in an aircraft, a training center instructor must hold a current flight instructor certificate with certificates and ratings applicable to the aircraft used for instruction, hold at least a valid second class medical certificate, and meet the recency of experience requirements of part 61. These proposed requirements for aircraft flight instructors are the same as those currently required by part 61.

AMR commented that, by using the words "training, testing, and checking" in proposed paragraph (b), the FAA would impose these requirements on evaluators as well as instructors, and noted that there are no proposed sections dealing with evaluator privileges and limitations. AMR suggested changing the title of this section to include evaluators.

The FAA agrees that the title should be changed as recommended and has reworded the title accordingly and has added evaluation to this paragraph.

Proposed paragraph (c) included the following:

(c) A training center may not allow an instructor to—

(1) Excluding briefings and debriefings, conduct more than 8 hours of instruction in any 24-consecutive-hour period.

FSI, ATA, and several air carrier certificate holders commented that the duty times proposed in this paragraph are too restrictive.

Flight instructor duty time was discussed under § 61.169. As discussed in that section, the FAA is convinced that it is in the interest of safety to assure that instructors are not unduly fatigued when instructing pilots. The proposed duty-time limitations are considered necessary to ensure that instructors are sufficiently alert when giving required instruction.

The FAA has, however, amended this and § 61.169 to exclude briefings and debriefings in response to the concerns of these commenters.

FSI commented that the words "* * * any 24-consecutive-hour period" in proposed paragraph (c)(1) be changed to "* * * a day."

The FAA disagrees with the commenter's suggested wording, for such wording would allow an instructor to conduct 16 consecutive hours of instruction, excluding briefings and debriefings. This practice is considered unacceptable for the reasons stated above.

Proposed paragraph (c)(3)(iv) states that a training center may not allow an instructor to provide flight instruction in an aircraft unless that instructor holds at least a valid second class medical certificate.

ATA and several part 121 certificate holders commented that this paragraph should specify that an instructor who instructs only in simulation need not hold a medical certificate.

AIA commented that there was no need to require a medical certificate for flight instructors, since it was not required before.

The FAA agrees with both commenters. Paragraph (c)(3)(iv) has been amended to specify that a medical certificate is required only when instructing from a required crewmember seat in an aircraft in flight. This change simply reiterates part 61 requirements for an instructor to have a medical certificate when acting as required flight crewmember.

This section is adopted with the changes discussed.

§ 142.51 Qualifications to instruct in a flight simulator or a flight training device. Reserved. See the discussion above entitled "Part 142."

§ 142.53 Training center instructor training and testing requirements. Section 142.53 proposed initial and annual recurrent training that would be required of all training center instructors.

Paragraph (a) proposed:

> (a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:
>
> (1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for which that instructor is authorized to instruct under this part.

FSI commented that the proposal in paragraph (a)(1) should provide that an instructor's demonstration would be made "* * * in a representative segment of a course." According to FSI, this change would provide a more suitable way to determine an instructor's knowledge and proficiency in multiple subjects in different courses for various aircraft types.

Paragraph (a) has been reworded. Changing the wording to "instructing in a representative segment of each curriculum," allows evaluation of instructors in a broad sampling of all subjects. However, the FAA has specified that the evaluation must include a representative segment from each curriculum.

Paragraph (b)(2), as originally proposed, provided that "An instructor who is unable to hold a medical certificate may not instruct. * * *" In the SNPRM referred to earlier, the FAA proposed a change to paragraph (b)(2) to eliminate the words "who is unable to hold a medical certificate," because that restriction was believed to be unnecessary.

For clarification, the FAA has further revised paragraph (b)(2) of the final rule to specifically permit an instructor to provide instruction even if he or she does not hold an airman medical certificate, provided that the instructor is otherwise qualified. It is also revised by removing an obsolete reference "advanced simulation plan."

Proposed paragraph (b)(2)(ii)(B) requires instructors to participate in an in-flight observation training course, that includes three takeoffs and three landings, and that includes performing at least 1 hour of LOFT as the sole manipulator of the controls. The 1 hour of LOFT must be performed in a flight simulator that replicates an aircraft of the same class and, if a type rating is required, of the same type as the aircraft represented by the qualified and approved flight simulator in which that instructor is designated to instruct.

Several commenters stated that paragraph (b)(2)(ii)(B) refers to Level C or Level D flight simulators, and suggested that appendix H of part 121 be changed by this rulemaking to indicate levels instead of phases.

The proposed requirement contained in this paragraph can be accomplished only in Level C or Level D flight simulators, as the Administrator currently qualifies flight simulators. As discussed above in the section of this document entitled "Related Activity," the FAA has issued an NPRM entitled "Part 121; Appendix H, Advanced Simulation Plan Revisions" [60 FR 8490; February 14, 1995] to update and revise appendix H of part 121. In that NPRM, the FAA proposes to change all references from "phases" to "levels" in part 121, appendix H.

ATA and several other commenters stated that paragraph (c) of this section establishes a base-month concept for instructor recurrent qualifications, and suggested instead an annual requirement only, similar to the requirement appropriate to part 121 certificate holders.

The FAA does not agree. The commenter's suggestion apparently would allow training centers to provide recurrent training to instructors as infrequently as every 24 months. The FAA believes that 12 months is the maximum period that should be allowed between recurrent qualifications. Therefore, the FAA has adopted the recurrent training requirement once each 12-month period, as proposed.

General Comments to § 142.53 as Proposed

ATA commented that, in many cases, part 121 instructor training is more comprehensive than the training that would be required under this section and under § 142.55. It recommended that wording be incorporated to credit an instructor with equivalent training that he or she may have completed in a part 121 instructor training course.

The FAA agrees. Accordingly, a new paragraph (d) has been added to permit an instructor to receive credit for equivalent instructor training courses taken under part 121 or other courses the Administrator finds equivalent.

AMR commented that this section and title should be amended to specify that instructors who teach in courses not leading to pilot certification under part 61 are not subject to the provisions of this section.

The proposed requirements contained in this section apply to instruction designed to satisfy only various requirements of 14 CFR. They address, among other things, courses for review, proficiency, added ratings, and authorizations in addition to certification. As discussed in the section-by-section discussion of § 142.31, the instructor qualification requirements of part 142 do not apply to courses that are not designed to satisfy any part of 14 CFR and that are not subject to approval of the Administrator.

One commenter asked why simulation-only instructors are not required to complete initial or recurrent training in aircraft, the same as instructors who instruct in flight.

The FAA has used past experience and recommendations from a joint industry-FAA working group to form alternatives to in-flight training, testing, and checking that ensure an equivalent level of safety, since simulation-only instructors will not be instructing in aircraft.

ATA and several part 121 certificate holders commented that proposed § 142.91 in subpart G, which paralleled this section and has been withdrawn, should have a paragraph added to require an annual written test and an annual proficiency check in each flight simulator, flight training device, and/or aircraft in which the instructor will be instructing. According to these commenters, the test and check should cover the maneuvers that the instructors will be instructing in.

The FAA agrees and has revised this proposed parallel section accordingly.

AMR asked if an instructor could instruct under subpart C and subpart G at the same time. It recommended that this should be permitted.

Although subpart G has been withdrawn, instructors will be permitted to provide instruction to air carrier clients and non-air-carrier clients if otherwise qualified.

AIA commented: "This (sic) is more restrictive than existing check pilot requirements. Why?"

The commenter apparently is referring to this entire section as being restrictive. The FAA would not describe this as more, or less, restrictive than existing check pilot requirements. Check pilots are employed in parts 121 and 135. They provide checks pursuant to the comprehensive training programs required by those parts. A check pilot has functions and responsibilities different from those of a part 142 training center instructor. Thus, the training and checking provisions proposed for part 142 instructors have been tailored to meet part 142 requirements. They necessarily are different than the training and testing requirements applicable to check pilots performing checks under part 121 and part 135.

This section is adopted with the several changes discussed.

§ 142.55 Training center evaluator requirements. Paragraph (a) of this section proposed the requirements for an evaluator, as follows:

(a) In order to authorize a person as evaluator, a training center must ensure that the person—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.47, 142.49, and 142.53 of this part; and

(3) Prior to authorization, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial designation satisfactorily completes a course of training provided by the training center that includes the following:

(i) Pilot evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory checks and subsequent corrective action.

AMR, commenting on proposed paragraph (a), stated that it was not clear if training center evaluators will have authority equivalent to designated examiners or pilot proficiency examiners, and asked for clarification.

Under part 142 an "evaluator" is a person who determines competence of persons applying for a number of different certificates and ratings subject to 14 CFR on behalf of the Administrator. By contrast, designated examiners and pilot proficiency examiners have more limited authority.

ATA and several part 121 certificate holders commented that proposed § 142.93 in subpart G, which paralleled this section and has been withdrawn, should have a paragraph added to require an annual written test and an annual proficiency check in each flight simulator, flight training device, and/or aircraft in which the instructor will be instructing. According to these commenters, the test and check should cover the maneuvers that the instructors will be instructing in.

The FAA agrees and has added a new paragraph (a)(4) to clarify the request of the commenters.

As discussed above, under § 142.53, pursuant to an ATA comment, the FAA has determined that it is appropriate to give credit to potential evaluators who have completed a part 121 evaluator training course.

Accordingly, a new paragraph (c) has been added to permit an evaluator to receive credit for equivalent evaluator training courses taken under part 121 or part 135 that the Administrator finds equivalent.

In response to several comments on proposed § 142.93 (withdrawn) the FAA has added a new paragraph (d) to this parallel section to except evaluators, qualified in accordance with SFAR 58, from the evaluator requirements of this section.

In addition to the above-referenced revisions, several editorial changes have been made. In proposed paragraph (b) the term "instructor" is replaced with "evaluator." The term "curriculum" has been substituted for the term "training course" and the term "tests" has been substituted for the term "checks." The editorial changes have been made to bring the terms into conformity with the commonly accepted definitions as used in numerous other parts of 14 CFR and numerous FAA publications.

With the changes discussed, this section is adopted as proposed.

§ 142.57 Aircraft requirements. Paragraph (a)(1) and (a)(2) of this section proposed that training center aircraft used for instruction be civil aircraft of U.S. registry if used in the United States, and that training centers located outside the country could use aircraft registered in the host country.

Several commenters, including in effect Airbus, discussed the need to train in customer-owned aircraft which might be registered in another country, be operated by the aircraft manufacturer during pre-certification, or be operated under an export certificate of airworthiness.

The FAA agrees and has determined that it is unnecessary to specifically provide for the registration of the aircraft being used. It is sufficient that the training center will have to comply with the registration requirements of the country of operation. Accordingly, proposed paragraphs (a)(1) and (2) have not been adopted. This change should relieve the commenter's concern. These changes will allow training centers more flexibility to train customers in customer-owned aircraft.

With minor editorial changes and restructuring to proposed paragraph (b), this section is adopted as amended.

§ 142.59 Flight simulators and flight training devices. Section 142.59(a) proposed that flight simulators and flight training devices used in an approved training program must be qualified by the Administrator. Paragraph (a) of this section also proposed that a flight simulator or flight training device be approved for use in a training center training program curriculum. The preamble to paragraph (a) contained the statements "Simulation has benefit only if behaviors learned can be transferred to the aircraft. No effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft."

ATA and several part 121 air carriers commented that the statement about effective transfer of learning is untrue.

Based on its experience with flight simulation and on study evidence available to its National Simulator Program Manager (NSPM), the FAA has concluded that the statements are true. While some learning may transfer from devices that do not accurately replicate aircraft, the experience gained is not

adequate to justify their use as a sole means of training, testing, and checking.

A few air carriers commented that they were not sure what was meant by the words "make, model, and series" used in an example that was provided in the NPRM preamble to proposed paragraph (a)(1), which stated, "If part 61 * * * requires landing in a particular make, model, and series aircraft, then a flight simulator used to simulate that aircraft would have to be qualified and approved both for the visual landing and to simulate the make, model, and series of aircraft." They provide an example of an aircraft type and different models of that type.

The commenters are correct. The FAA did not intend to distinguish between manufacturers' models of the same aircraft type. To make it clear that only the particular aircraft type need be simulated, as intended, the FAA has added the words "or aircraft type" to the text of paragraph (a)(1) in the final rule. Section 142.59(c)(1) proposed that flight simulators and flight training devices used by training centers be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for initial qualification of the equipment.

One commenter pointed out an editorial omission of the word "qualification" in the text of this paragraph. The commenter indicated that the last word of proposed paragraph (c)(1) should be "qualification" and not "approval."

The technical guidelines for flight simulators are listed in AC 120–45, as amended. That AC defines qualification as distinct from, and preceding, approval of a flight simulator. The FAA has determined that it should continue the use of commonly accepted words to avoid possible confusion.

Section 142.59(c)(3) proposed that flight simulators and flight training devices used under part 142 be given a functional check before being used. Further, this paragraph proposed that training center instructors must keep a discrepancy log, and enter all discrepancies in that log at the end of each training session or check.

One commenter asked how often the preflight requirement must be met and also the purpose of the requirement.

The preflight is required each day the flight simulator is used. The FAA added the words "each day" to proposed paragraph (c)(3) to make clear the requirement for frequency of preflight inspections. The purpose of preflight inspections is for the instructor to determine whether the applicable Simulator Component Inoperative Guide (SCIG), if any, has been met, or whether all simulator components needed for a specific training or testing period are present and operative. The FAA believes that, to ensure effective training, a flight simulator or flight training devices must accurately replicate the performance of an aircraft. The FAA can determine that flight simulation accurately replicates an aircraft only if all components of a flight simulator or flight training device are checked for proper operation before the device is used.

Section 142.59(d) proposed that, unless otherwise authorized by the Administrator (in an SCIG), all components on a flight simulator or flight training device used by a training center must be operative to ensure faithful replication of aircraft capabilities.

Several comments were received concerning this proposal. Generally, the comments addressed aircraft Minimum Equipment List (MEL), and the fact that the FAA has not developed a master MEL for flight simulators.

The FAA is amending paragraph (d) this section to provide that no component of a simulator may be inoperative, missing, or malfunctioning if that component is required for or involved in the planned training, testing, or checking. A flight simulator or flight training device SCIG is a guide approved by the Administrator that indicates the specific training, testing, or testing tasks that are authorized. It also indicates the restrictions imposed, if a component is inoperative, malfunctioning, or missing. At this time, the FAA does not plan to issue an SCIG or master SCIG, but intends instead to allow any training center applicant or training center to develop its own for the various courses which it may teach and submit it to the FAA for approval. The FAA will review and approve an SCIG developed and submitted by a training center.

Section 142.59(e) proposed to allow training centers to use flight simulators in approved courses without specific route or terminal aids and visual scenes.

While the FAA did not receive comments on this proposed section, ATA and others commented in response to the proposed companion section, § 142.97, (since withdrawn), that operator specific routes may be necessary. The commenters stated that the relaxed specific route requirements during LOFT would not meet the requirements of § 121.409(b)(3).

The FAA understands the commenter's concern. LOFT or other LOS may be used for purposes other than necessarily satisfying § 121.409. If a particular air carrier wants a particular route or other detail represented, it may require that of the training center with which it contracts. It is inefficient for certification and type rating training and testing for all airmen to be subject to an absolute requirement for training along a particular route, which may be "repositioned along" anyway. The FAA believes it is appropriate to leave it to the discretion of a particular air carrier to determine if it wants a specific route simulation in its training program. Therefore, this section is adopted as proposed.

Jet Exam, commented that the language of this section could be interpreted to mean that a training center applicant would have to obtain training program approval or a training course approval before it could request approval of a simulator, and that this would be an unnecessary burden on the applicant.

The FAA agrees with the commenter's observation that obtaining approval of a training course before obtaining approval for a flight simulator could be an economic burden. However, the FAA did not propose that a certificate applicant would have to obtain training program approval or a training course approval before it could request approval of a simulator.

A commenter suggested that the acronym "NSPM" should be changed to "the Administrator." According to the commenter, this would allow for the possibility of renaming of that function or redelegation of its functions.

The FAA notes that, while the acronym "NSPM" is used in the NPRM preamble to this section, it did not appear in the NPRM proposed rule text. However, the FAA did use the term "Administrator" in the rule text of the NPRM and final rule as the commenter has suggested.

The FAA added a clause excepting AQP from the requirements of this section, to be consistent with the exception of AQP from the requirements of § 142.39. With that addition, and the other changes discussed, this section is adopted as proposed.

Subpart D—Operating Rules

This subpart sets forth proposed operating rules for training centers that provide training in accordance with subpart B of part 142.

§ 142.61 Applicability. The FAA proposed in this section that the operating rules in this subpart would apply to training centers providing training to clients other than air carrier clients.

Airbus commented that the applicability of subparts D and E should

be amended to permit aircraft manufacturer training centers who intend to train only part 121 aircrews, their own employees, U.S. certificated employees of the manufacturer, and FAA inspectors to conduct that training under subparts F, G, H, and I of part 121. The commenter states that part 121 requirements are the most appropriate criteria for these trainees since their duties are related to large aircraft that are operating in air carrier service. Airbus made the same comment about FAA inspectors in comments about several other sections. Other commenters made an essentially identical comment in reference to some applicability sections.

The FAA does not agree that the groups of trainees identified by the commenter should be trained under any rules different from the rules governing certification and type rating requirements for airmen at large. The only exception (a waiver under the authority of appendix A of part 61) is for aircrew employees completing an air carrier training program and meeting other terms of the waiver provision of appendix A. The persons identified by the commenters specifically do not meet the waiver requirements. Large airplanes are operated by persons other than air carrier certificate holders. The FAA certificates airmen to operate aircraft of various sizes under the provisions of several parts of 14 CFR. The part of 14 CFR under which a pilot is operating, and not the size of the airplane flown by the pilot, determines the pilot's prerequisite qualification and certification requirements.

Several of the comments made about this section are similar, or identical to, comments made about proposed §§ 61.63, 61.64, 61.157, and 61.158. The comments generally addressed applicability of specific training programs to various groups of airmen and the perception of a dual standard for an ATP certificate.

The FAA response to those similar or identical comments apply also to this section. Refer to those sections for discussion of related comments.

For the reasons discussed, this section is adopted as proposed.

§ 142.63 Privileges. Section 142.63 proposed to permit training center instructors and evaluators to meet recency of experience requirements in a flight simulator or flight training device, if the flight simulator or flight training device is used in a course approved in accordance with subpart B or subpart F, as applicable.

This section was revised to delete a reference to subpart F, which has been withdrawn, and to recognize that AQP makes separate and valid provisions for recency of experience of simulation instructors. With the revisions mentioned, this section is adopted as proposed.

§ 142.65 Limitations. Because the FAA intends that flight simulators used in testing, checking, or LOS provide the same time constraints and sequential, or overlapping, circumstances that occur in an actual aircraft, § 142.65 (a) proposed to prohibit the use of flight simulator or flight training device repositioning, freeze, or slow motion features during testing, checking, and LOFT.

ATA, several part 121 certificate holders, and an aircraft manufacturer commented that prohibiting the use of repositioning during LOFT might cause several hours of simulated cruise flight with very little value.

The FAA agrees with the commenters, and has revised proposed paragraph (a) by adding paragraph (a)(2) to permit the use of reposition along a route of flight to a point where the descent and approach phase of the flight begins. Also, in paragraph (a)(1), any slow motion, hold, or reposition features may be used at any time during training and practice, to help stimulate the simulation industry by helping minimize nonproductive time spent in a flight simulator.

Proposed § 142.65(b)(1) would require a crewmember qualified in the aircraft category, class, and type, if a type rating is required, to occupy each crewmember position during testing, checking, or LOS. During Category II and Category III testing, the copilot position would have to be occupied by a pilot qualified to perform the duties of an SIC for Category II or Category III operations, as applicable.

Airbus commented that this section would effectively prohibit the use of a medically disqualified (simulated) PIC during SIC training and testing unless the PIC had been fully qualified before serving in this capacity.

The FAA believes that a PIC should be able to function as a required crewmember during simulation testing even though he or she does not hold a valid medical certificate, provided that he or she is otherwise qualified in the flight simulator or was qualified in the aircraft type before losing medical certification. The FAA has determined that there is no safety hazard created by persons operating flight simulators without a valid medical certificate. Accordingly, a new paragraph (b)(3) has been added to allow for use of a PIC meeting the circumstances just discussed, and the section is adopted as otherwise proposed.

Subpart E—Recordkeeping

§ 142.71 Applicability. Proposed subpart E, "Recordkeeping," prescribed the records that a training center certificate holder must maintain for students who are not aircrew employees of operators under parts 121, 125, or 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart B of part 142.

Airbus offered the only comment. It suggested that certain persons, including FAA inspectors, should be excluded from the applicability of training or testing under this subpart.

The FAA does not agree with the suggestion. All of the persons identified by Airbus, including FAA inspectors, must complete the same certification requirements of 14 CFR that apply to other airmen.

For the reason discussed, this section is adopted as proposed.

§ 142.73 Recordkeeping requirements. Under this proposed section, the FAA specified that a training record would have to be maintained for each person who is enrolled in a course for which that person is to gain credit toward satisfying any requirement of 14 CFR. Paragraph (d) proposed:

(d) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) and (b) of this section.

Only one comment was received. The commenter suggested that the only practical place to keep the required records is at the training center where the activity requiring records takes place. It suggested that paragraph (d) be reworded accordingly.

The FAA agrees and has reworded paragraph (d) to require that the records be kept at the training center or satellite training center where the training is conducted, or at another site approved by the Administrator.

The FAA has revised paragraph (c) to provide that records of qualification to act as instructor or evaluator must be maintained for the period of time that the individual is employed.

This section is adopted as otherwise proposed.

Subpart J—Other Approved Courses (adopted as Subpart F)

§ 142.115 (adopted as § 142.81) Conduct of other approved courses. The FAA proposed in this section (formerly numbered as § 142.115 and now renumbered to § 142.81) to provide that training centers or training center applicants may apply for approval to

conduct training for persons other than pilot crew members. Under the proposal, a course may be approved by the Administrator upon a finding that it provides a curriculum that will achieve a level of competency equal to, or greater than that required by the appropriate part of 14 CFR.

A few commenters stressed that many types of training do not require FAA approval and that subpart J should be deleted.

While it is true that many courses of training do not require FAA approval, there are several that do, and others that may at some future date require such approval. This proposed subpart is intended to allow a training center or a training center applicant to apply for approval of curricula for persons other than air crews.

TDM Group, Inc., described a flight attendant training program that it is undertaking with McDonnell Douglas and Continental Airlines. It remarked that it would like to begin such training under part 142, and encouraged the Administrator to keep and to expand this subpart.

For the reasons discussed, this section is renumbered as § 142.81 instead of § 142.115 and is adopted as proposed. A minor editorial change has been made to proposed paragraph (c) to indicate that an applicant for course approval must comply with the applicable requirements of "subpart A through subpart F of this part" rather than "subpart B or subpart F of this part" as stated in the proposal.

Editorial Corrections

In addition to the revisions discussed above, a number of editorial changes have been made to the text of the final rule including the renumbering of several paragraphs to conform to the current format and style of the regulations.

Harmonization With ICAO, JAA, and JAR

The proposals adopted in this rulemaking have been compared to ICAO Annex I, "Personnel Licensing," and the JAA/JAR. This rule is compatible with international agreements and parallel regulations, except for the differences which follow:

1. Section 61.65, "Instrument rating requirements," will allow credit for 35 hours of simulated or actual instrument time for those applicants who complete an entire approved instrument curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 2, § 2.6.1.2.2 allows only 30 hours of credit, and requires 10 hours of that experience to be in an actual aircraft.

2. Section 61.113, "Rotorcraft rating: Aeronautical experience," will allow an applicant to qualify for this rating with 35 hours of flight experience, any part of which may be simulated flight, if that applicant completes an entire approved helicopter rating curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 7, § 2.7.1.3.1 requires 40 hours of flight experience for this rating, of which only 5 hours can be simulated flight.

3. Section 61.129, "(Commercial) Airplane rating: Aeronautical experience," will allow up to 100 hours of flight time to be simulated flight if accomplished in an approved flight simulator or approved flight training device, and any part of the 190 hour total experience requirement to be simulated flight if the applicant completes an entire approved commercial airplane curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 7, § 2.4.1.3 allows credit for only 10 hours of simulated flight experience. It should be noted that the superseded § 61.129 allowed credit for 50 hours of simulated flight time toward this rating, which was different from ICAO standards.

The FAA will file a Statement of Differences with ICAO to notify that body of the listed differences.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule have been approved by the Office of Management and Budget and have been assigned number 2120–0570. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this final rule, the FAA has determined that it: (1) Will generate benefits that justify its costs and is a "significant regulatory action" as defined in the Executive Order; (2) is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this final rule in a regulatory evaluation, which is summarized in the following paragraphs.

Benefits

This rule provides benefits by reducing the amount of training aircraft flight hours. The increased substitution of on-the-ground training in flight simulators and flight training devices for in-the-air training in aircraft decreases the risk of fatal aviation accidents while training. The increased substitution also yields cost savings resulting from reduced fuel and oil consumption (energy conservation), as well as reduced required maintenance costs.

Most of the cost savings come from lowered operations costs, resulting from using simulators and training devices instead of aircraft. The estimated savings from existing simulator training centers training pilots under parts 121, 135, and 91 will be $1.2 billion ($808 million discounted) over the next 10 years. Furthermore, the final rule will generate additional savings from increased simulator training of general aviation pilots over the next decade that total $37 million ($23 million discounted). The total discounted savings attributed to reduced training aircraft flight hours equals $831 million over the next 10 years.

The FAA also estimates the value of the safety benefit at $42 million ($26 million discounted) over the same period. Thus, the total discounted value of part 142 benefits equals $857 million: $832 million resulting from greater energy conservation, and $26 million resulting from reduced training accidents.

Costs

Two elements make up the additional administrative cost of part 142: (1) The cost for organizations currently engaged in flight instruction to apply to qualify for a part 142 certificate; and (2) the cost for the government to process and to monitor those applications as well as to inspect and to train the inspectors of part 142 training centers. Over one-half of the estimated administrative costs to

implement the simulator rule will be incurred in the first 2 years.

The total 10-year additional administrative cost to implement part 142 is estimated to be about $1.6 million ($1.3 million discounted) of which over one-half or $881,000 ($797,000 discounted), is expected to be incurred in the first 2 years. Of this amount, $57,000 ($52,000 discounted) are applicant costs, and $824,000 ($745,000 discounted) are FAA costs. The balance, $731,000 ($477,000 discounted) represents FAA monitoring costs over the remaining 8 years.

The FAA expects that the costs of operating simulators for the newly certificated part 142 training centers will continue to be the same as those incurred in operating those same simulators under the rigid standards and requirements imposed by FAA exemptions. The costs of meeting these FAA standards and requirements are captured in this analysis as part of the operating costs of a simulator. This cost has been subtracted from the cost of in-flight training which it replaces, in computing the cost savings from simulator training.

Benefit-Cost Comparison

The preceding sections show that this final rule will result in benefits ($858 million discounted) that far exceed the costs ($1.3 million discounted) imposed by the rule. Therefore, the FAA has determined that the simulator final rule is cost beneficial.

The NPRM established the benefit-to-cost ratio as 3:1; the final rule, using a more comprehensive definition of benefits, establishes the benefit-to-cost ratio as approximately 660:1. This is explained, in part, by a reduction in total costs from approximately § 3.5 million, discounted in the NPRM estimate to approximately § 1.3 million, discounted in the final rule estimate. This reduction results from the abandoning of the concept of an FAA national field office to manage certificated simulator training centers.

Most of the increase in the benefit-cost ratio, however, is explained by the substantial increase in cost-savings benefits ($11 million, discounted NPRM estimate relative to $858 million discounted final rule estimate) resulting from a more comprehensive definition of benefits. Both the NPRM and the final rule take into account cost-saving benefits attributed to the substitution of simulator hours for training aircraft flight hours as well as to the averting of some aircraft training accidents. In the NPRM, however, the FAA only accounted for cost savings attributed to the incremental hours of simulator training substituted for general aviation pilot training. The final rule assigns cost savings to not only this subgroup, but to all parts 121, 135, and other 91 subgroups that currently provide training under exemption. Finally, the value of life used in the final rule to measure potential training accident fatalities averted was revised from $1.5 million to $2.7 million.

International Trade Impact Analysis

The FAA has determined that this rule will not have a significant impact on international trade. The FAA believes that the final rule will not negatively effect operators in the training of foreign citizens who accomplish such pilot training in the United States. Nor will the final rule have a significant impact on international trade should the training occur outside the United States, so long as the use of simulators outside the United States is in compliance with FAA standards and requirements if the intent is for U.S. pilot certification.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities. Based on these criteria, a small air carrier is one that owns nine or fewer aircraft. A small simulator training school has 10 or fewer employees. A substantial number of small entities is not less than 11 or more than one-third of affected small entities.

The FAA has determined that 37 pilot training schools and 10 contract trainers now train under exemption from specific part 61 requirements. These organizations will incur some costs in applying for part 142 certification. Most of these schools employ more than 10 employees (the small entity threshold); however, the FAA does not expect that those that do not will experience any unnecessary and disproportionate burden by Federal regulations.

With regard to seven part 121 and part 135 operators holding exemptions to train using simulators, each has more than nine aircraft. Hence, no part 121 or 135 air carriers affected by this rule are small entities.

The FAA, therefore, has determined that this rule will not have a substantial impact on a significant number of small entities.

Federalism Implications

The regulations announced herein would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12286 and that this rule would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 61

Aircraft, Airmen.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

14 CFR Part 141

Airmen, Educational facilities, Schools.

14 CFR Part 142

Administrative practice and procedure, Aircraft, Airmen, Drug testing, Educational facilities, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

4. Section 1.1 is amended by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Category IIIa operations, an ILS approach and landing with no decision height (DH), or a DH below 100 feet (30 meters), and controlling runway visual range not less than 700 feet (200 meters).

Category IIIb operations, an ILS approach and landing with no DH, or with a DH below 50 feet (15 meters), and controlling runway visual range less than 700 feet (200 meters), but not less than 150 feet (50 meters).

Category IIIc operations, an ILS approach and landing with no DH and no runway visual range limitation.

* * * * *

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Section 61.2, 61.3, and 61.5 are redesignated as §§ 61.3, 61.5, and 61.6.

6A. A new § 61.2 is added to read as follows:

§ 61.2 Definition of terms.

For the purpose of this part:

(a) *Authorized Instructor* means—

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under part 121 (SFAR 58), part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) *Flight Simulator, Airplane* means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) *Flight Simulator, Helicopter* means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) *Flight Training Device* means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Need not have a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) *Set of airplanes or rotorcraft* means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion systems.

7. Section 61.3 is revised to read as follows:

§ 61.3 Certification of foreign pilots and flight instructors.

(a) A person who is neither a U.S. citizen nor a resident alien may be issued a pilot certificate or flight instructor certificate under this part (other than under § 61.75 or § 61.77), outside the United States, only when the Administrator finds that—

(1) The pilot certificate is needed for the operation of a U.S.-registered civil aircraft; or

(2) The flight instructor certificate is needed for the training of students who are citizens of the United States.

(b) Training centers, and their satellite training centers certificated under part 142 of this chapter, may, outside the United States—

(1) Prepare and recommend applicants for additional ratings and endorsements to certificates issued by the Administrator under the provisions of this part, and award additional ratings and endorsements within the authority granted to that training center by the Administrator; and

(2) Prepare and recommend U.S. citizen applicants for airman certificates, and issue certificates to U.S. citizens within the authority granted to that training center by the Administrator.

8. Section 61.5 is amended by revising the introductory text of paragraph (d), revising paragraph (f), and adding new paragraphs (i) and (j) to read as follows:

§ 61.5 Requirement for certificates, rating, and authorizations.

* * * * *

(d) *Flight instructor certificate.* Unless otherwise authorized by the Administrator, and except for lighter-than-air instruction in lighter-than-air aircraft, no person other than the holder of a flight instructor certificate issued in accordance with subpart G of this part, with an appropriate rating on that certificate, may—

* * * * *

(f) *Category II pilot authorization.* (1) No person may act as pilot in command of a civil aircraft during Category II operations unless—

(i) That person holds a current Category II pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category II operations.

(2) No person may act as second in command of a civil aircraft during Category II operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category II operations.

* * * * *

(i) *Category III pilot authorization.* (1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second in command of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category III operations.

(j) *Exceptions.* Paragraphs (f) and (i) of this section do not apply to operations conducted by the holder of a certificate issued under part 121 or part 135 of this chapter.

9. A new § 61.4 is added to read as follows:

§ 61.4 Qualification and approval of flight simulators and flight training devices.

Each flight simulator and each flight training device used for training, for which an airman is to receive credit to satisfy any training, testing, or checking requirement under this chapter, must be qualified and approved by the Administrator for—

(a) The training, testing, and checking for which it is used;

(b) Each particular maneuver, procedure, or crewmember function performed; and

(c) The representation of the specific category and class of aircraft, type of aircraft, particular variation within type of aircraft, or set of aircraft in the case of some flight training devices.

10. Section 61.13 is amended by revising paragraph (e) to read as follows:

§ 61.13 Application and qualification.

* * * * *

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) To meet the experience requirement of paragraph (e)(3) of this section, and for the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used if it is approved by the Administrator for such use.

* * * * *

11. Section 61.21 is amended by revising the section heading and the first sentence to read as follows:

§ 61.21 Duration of Category II and Category III pilot authorization. (for other than part 121 and part 135 use).

A Category II pilot authorization and a Category III pilot authorization expire on the last day of the sixth month after the month last issued or renewed. * * *

12. Section 61.39 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 61.39 Prerequisites for flight tests.

* * * * *

(a) * * *

(6) If all increments of the practical test for a certificate or rating are not completed on one date, all remaining increments of the test must be satisfactorily completed not more than 60 calendar days after the date on which the applicant begins the test.

(7) If all increments of the practical test are not satisfactorily completed within 60 calendar days as required by paragraph (a)(6) of this section, the applicant must retake the entire practical test, including those increments satisfactorily completed.

* * * * *

13. Section 61.45 is amended by revising the section heading and paragraphs (a), (c), and (d) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* Except when an applicant for a certificate or rating under this part is permitted to accomplish the entire flight increment of the practical test in a qualified and approved flight simulator or in a qualified and approved flight training device:

(1) The applicant must furnish for each required test, except as provided by paragraph (a)(2) of this section, an aircraft of U.S. registry—

(i) Of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating; and

(ii) That has a current standard or limited airworthiness certificate.

(2) At the discretion of the person authorized by the Administrator to conduct the test, the applicant may furnish—

(i) An aircraft that has a current airworthiness certificate other than standard or limited, but that otherwise meets the requirement of paragraph (a)(1) of this section;

(ii) An aircraft of the category and class, and type aircraft, if applicable, of foreign registry that is certificated by the country of registry; or

(iii) A military aircraft of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating.

* * * * *

(c) *Required controls.* An applicant must furnish for each practical test an aircraft—

(1) (Other than lighter-than-air) listed in paragraph (a) of this section.

(2) That has engine controls and flight controls—

(i) That are easily reached; and

(ii) Unless the evaluator conducting the test accepts otherwise, that can be operated in a conventional manner by the applicant, other required crewmembers, and the evaluator if the evaluator occupies a pilot's seat.

(d) *Simulated instrument flight equipment.* An applicant for any practical test involving flight maneuvers and flight procedures accomplished solely by reference to instruments, must furnish equipment that—

(1) Excludes the applicant's visual reference to objects outside the aircraft; and

(2) Is otherwise acceptable to the Administrator.

* * * * *

14. Section 61.51 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(3)(iii), (c)(2)(i), (c)(4), and

(c)(5), and by adding new paragraphs (b)(2)(viii) and (c)(2)(iv) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(b) * * *

(1) * * *

(ii) Total time of flight or flight lesson.

(iii) Except for simulated flight, the place, or points of departure and arrival.

(iv) Type and identification of aircraft, flight simulator, or flight training device.

(2) * * *

(viii) Instruction in a flight simulator or instruction in a flight training device.

(3) * * *

(iii) Simulated instrument conditions in actual flight, in a flight simulator, or in a flight training device.

(c) * * *

(2) * * *

(i) A private or commercial pilot may log as pilot-in-command time that flight time when the pilot is—

(A) The sole manipulator of the controls of an aircraft for which the pilot is rated; or

(B) Acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulation under which the flight is conducted.

* * * * *

(iv) A recreational pilot may log as pilot-in-command time only that time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated.

* * * * *

(4) *Instrument flight time.*

(i) Except as provided in paragraph (c)(4)(iv) of this section, a pilot may log as instrument flight time only that time when the pilot operates an aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(ii) For simulated instrument conditions a qualified and approved flight simulator or qualified and approved flight training device may be used, provided an authorized instructor is present during the simulated flight.

(iii) Each entry in the pilot logbook must include—

(A) The place and type of each instrument approach completed; and

(B) The name of the safety pilot for each simulated instrument flight conducted in flight.

(iv) An instrument flight instructor conducting instrument flight instruction in actual instrument weather conditions may log instrument time.

(5) *Instruction time.* All time logged as instruction time must be certified by the authorized instructor from whom it was received.

* * * * *

15. Section 61.55 is amended by revising paragraphs (b)(2)(ii) and by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 61.55 Second-in-command qualifications.

* * * * *

(b) * * *

(2) * * *

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command.

(3) Except as provided in paragraph (b)(4) of this section, the requirements of this paragraph (b)(3) may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for such purposes; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) An applicant for an initial second-in-command qualification for a particular type of aircraft who is qualifying under the terms of paragraph (b)(3) of this section shall satisfactorily complete a minimum of one takeoff and one landing in an aircraft of the same type for which the qualification is sought.

* * * * *

16. Section 61.56 is amended by revising paragraph (e) and adding a new paragraph (h) to read as follows:

§ 61.56 Flight review.

* * * * *

(e) An applicant who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed a test for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section if the test was conducted by a person authorized by the Administrator, or authorized by a U.S. Armed Force, to conduct the test.

* * * * *

(h) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be approved by the Administrator for that purpose.

(2) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(3) Unless the review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57 (c) or (d).

(4) The flight simulator or flight training device used must represent an aircraft, or set of aircraft, for which the pilot is rated.

17. Section 61.57 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(c) *General experience.* (1) Except as otherwise provided in paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules (VFR) or day instrument flight rules (IFR) if no persons or property are carried other than as necessary for compliance with this part.

(3) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device—

(i) Qualified and approved by the Administrator for landings; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Night experience.* (1) Except as provided in paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) The takeoffs and landings required by paragraph (d)(1) of this section may

be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(e) *Instrument currency.* (1) Except as provided by paragraph (f) of this section, no person may act as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, unless, within the preceding 6 calendar months, that person has—

(i) In the case of an aircraft other than a glider—

(A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, not more than 3 hours of which may be in approved simulation representing aircraft other than gliders; or

(B) Passed an instrument competency test as described in paragraphs (e)(2) and (e)(3) of this section; or

(ii) In the case of a glider, the person must have logged at least 3 hours of instrument time, at least half of which was in a glider or an airplane, except that the person may not carry a passenger in the glider until that person has completed at least 3 hours of instrument flight time in a glider.

(2) A person who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time, or within 6 calendar months thereafter, may not serve as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, until that person passes an instrument competency test in the category and class of aircraft involved, given by a person authorized by the Administrator to conduct the test.

(3) The Administrator may authorize the conduct of all or part of the test required by paragraph (e)(2) of this section in a qualified and approved flight simulator or flight training device.

* * * * *

18. Section 61.58 is revised to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

(b) This section does not apply to persons conducting operations under part 121, part 125, part 127, part 133, part 135, or part 137 of this chapter.

(c) The pilot-in-command check given in accordance with the provisions of part 121, part 125, part 127, or part 135 of this chapter may be used to satisfy the requirements of this section.

(d) The pilot-in-command check required by paragraph (a) of this section may be accomplished by satisfactory completion of one of the following—

(1) A pilot-in-command proficiency check conducted by a person authorized by the Administrator, consisting of the maneuvers and procedures required for a type rating;

(2) The practical test required for a type rating;

(3) The initial or periodic practical test required for the issuance of a pilot examiner or a check airman designation; or

(4) A military flight check required for a pilot in command with instrument privileges, in an aircraft that the military requires to be operated by more than one pilot.

(e) A check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) If the flight simulator used pursuant to this paragraph (e) is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated"; and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(3) If the flight simulator used pursuant to this paragraph (e) is not qualified and approved for landings the applicant must—

(i) Hold a type rating in the airplane represented by the simulator; and

(ii) Have completed, within the preceding 90 days, at least three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls in the type airplane for which the pilot-in-command proficiency check is sought.

(f) For the purpose of meeting the check requirements of paragraph (a) of this section, a person may act as pilot in command of a flight under day VFR conditions or day IFR conditions if no person or property is carried, other than as necessary to demonstrate compliance with this part.

(g) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next check is due.

19. Section 61.63 is amended by revising the section heading and paragraph (a) to read as follows:

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificates (for parts 121 and 135 use only).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is a pilot crewmember employee of a part 121 certificate holder or a part 135 certificate holder must meet the requirements of paragraphs (b) through (d) of this section, as applicable to the rating sought.

* * * * *

20. A new section 61.64 is added to read as follows:

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is not a crewmember employee applicant of a part 121 training program or a part 135 training program must meet the requirements of paragraphs (b) through

(i) of this section, applicable to the rating sought.

(b) *Category rating.* An applicant who holds a pilot certificate and applies to add a category rating must meet the following requirements:

(1) Present a record of training certified by an authorized instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft category and class rating sought;

(ii) Received flight training in the category and class of aircraft on the areas of operation applicable to the pilot certificate and aircraft category and class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the pilot certificate to which the added aircraft category rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the pilot certificate to which the added aircraft category rating would apply;

(2) Pass the knowledge test applicable to the pilot certificate and aircraft category and class rating sought; and

(3) Pass the practical test required for the pilot certificate held, and category and class rating sought.

(c) *Class rating.* An applicant who holds a pilot certificate and applies to add a class rating must meet the following requirements:

(1) The applicant must present a record certified by an authorized instructor showing that the applicant has—

(i) Received flight instruction in the class of aircraft on the areas of operation applicable to the pilot certificate and aircraft class rating sought;

(ii) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas applicable to the pilot certificate to which the category and class rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation applicable to the pilot certificate to which the aircraft class rating would apply;

(2) Pass a knowledge test applicable to the pilot certificate and aircraft class rating sought; and

(3) Pass a practical test required for the pilot certificate held, and required for the category and class rating sought.

(d) *Type rating.* An applicant who holds a pilot certificate and applies to add a type rating must meet the following requirements—

(1) Present a record of training certified by an authorized instructor that shows that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the type rating sought;

(ii) Received flight training on the areas of operation applicable to the type rating sought; and

(iii) Been found competent by the certifying flight instructor in the areas of operation required for the issue of the pilot certificate for which the aircraft type rating is sought.

(2) Passed a required practical test on the areas of operation listed in § 61.158 or § 61.163, as applicable, for the aircraft type rating sought.

(3) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (d)(2) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g).

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed as follows:

(1) Except as provided in paragraph (e)(2) of this section, the tasks must be performed in an aircraft of the same category, class, and type, if applicable, as the aircraft for which the added rating is sought.

(2) Subject to the limitations of paragraph (e)(3) through (e)(12) of this section, the tasks may be performed in a flight simulator or a flight training device that represents the aircraft for which the added rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter.

(4) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet at least one of the following:

(A) Hold a type rating for a turbojet airplane of the same class as the class of airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbojet type rating is sought.

(B) Hold a type rating for a turbopropeller airplane of the same class as the class of airplane for which the type rating is sought, or have been designated by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbopropeller airplane type rating is sought.

(C) Have at least 2,000 hours of actual flight time, of which 500 hours must be in turbine-powered airplanes of the same class as the class of airplane for which the type rating is sought.

(D) Have at least 500 hours of actual flight time in the same type airplane as the airplane for which the rating is sought.

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(5) Subject to the limitation of paragraph (e) (6) of this section, an applicant who does not meet the requirements of paragraph (e)(4) of this section may complete all training and testing (except for preflight inspection) for an added rating in a flight simulator if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets at least one of the following:

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought.

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the added rating, has logged—

(*1*) At least 100 hours of flight time in airplanes in the same class of airplane for which the type rating is sought and which require a type rating; and

(*2*) At least 25 hours of flight time in airplanes in the same type of airplane for which the rating is sought.

(6) An applicant meeting only the requirements of paragraph (e)(5) of this section will be issued an added rating with a limitation.

(7) The limitation on certificates issued under the provisions of paragraph (e)(6) of this section shall state, "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (e)(7) of this section—

(i) May not act as PIC of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in

command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the airplane to which the limitation applies.

(9) An applicant who does not meet the requirements of paragraph (e)(4) or (e)(5) of this section may be awarded an added rating after successful completion of one of the following requirements:

(i) Compliance with paragraph (e)(2) and (e)(3) of this section and the following tasks, applicable to airplane ratings only, which must be successfully completed on a static airplane or in flight, as appropriate:

(A) Preflight inspection;
(B) Normal takeoff;
(C) Normal ILS approach;
(D) Missed approach; and
(E) Normal landing.

(ii) Compliance with paragraphs (e)(2), (e)(3), and (e)(10) through (e)(12) of this section.

(10) An applicant meeting only the requirements of paragraph (e)(9) of this section will be issued an added rating with a limitation.

(11) The limitation on certificates issued under the provisions of paragraph (e)(10) of this section shall state, "This certificate is subject to pilot-in-command limitations for the added rating."

(12) An applicant gaining a certificate with the limitation specified in paragraph (e)(11) of this section—

(i) May not act as PIC of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the PIC, in an aircraft of the same type as the airplane to which the limitation applies.

(f) An applicant for a type rating who provides an aircraft not capable of the instrument maneuvers and procedures required by § 61.158 or § 61.163 for the practical test may—

(1) Obtain a type rating limited to "VFR only"; and

(2) Remove the "VFR only" limitation for each aircraft type in which the applicant demonstrates compliance with the instrument requirements of § 61.158 or § 61.163 or the requirements of § 61.73(e)(2).

(g) An applicant for a type rating may be issued a certificate with the limitation "VFR only" for each aircraft type not equipped for the applicant to show instrument competency.

(h) An applicant for a type rating in a multiengine, single-pilot-station airplane may meet the requirements of this part in another multiengine airplane.

(i) An applicant for a type rating in a single-engine, single-pilot-station airplane may meet the requirements of this part in another single-engine or multiengine airplane if the applicant meets the instrument currency requirements of § 61.57(e).

21. Section 61.65 is amended by removing and reserving paragraphs (d) and (f), revising paragraph (b) introductory text, paragraph (c) introductory text and (c)(1), (c)(3), (c)(4), and (c)(5), paragraph (e) introductory text and (e)(2) and (g); and adding paragraph (c)(6) and (h) to read as follows:

§ 61.65 Instrument rating requirements.

* * * * *

(b) *Ground instruction and written test.* An applicant for the written test for an instrument rating must have received ground instruction or have logged home study in, and passed a written test on, at least the following areas of aeronautical knowledge applicable to the rating sought:

* * * * *

(c) *Flight instruction.* Except as otherwise provided in this paragraph, an applicant for the practical test for an instrument rating must present a record certified by an authorized instructor showing instrument flight instruction and competency in an aircraft of the same category for which the instrument rating is sought, in each of the following areas of operations:

(1) Control and accurate maneuvering of the aircraft solely by reference to instruments.

* * * * *

(3) Instrument approaches to published minimums using two different nonprecision approach systems and one precision approach system.

(4) Cross-country flight in an aircraft in simulated or actual IFR conditions, on Federal airways or as routed by air traffic control, subject to the following:

(i) The flight must be at least 250 nautical miles (100 nautical miles for helicopters) including a minimum of one precision instrument approach and two nonprecision instrument approaches.

(ii) Each instrument approach must be accomplished at a different airport.

(iii) If the departure and final destination airports are the same airport, the destination airport may be considered as the third airport.

(iv) No approach need be done more than once.

(5) Simulated emergencies involving equipment or instrument malfunctions, missed approach procedures, deviations to unplanned alternates, recovery from unusual attitudes, loss of communications, and simulated loss of power on at least one-half of the engines if a multiengine aircraft is used.

(6) Flight instruction required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(5) of this section may be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device.

(d) [Reserved]

(e) *Flight experience.* Except as provided in paragraph (h) of this section, an applicant for an instrument rating must have at least the following flight time as a pilot:

* * * * *

(2) 40 hours of simulated or actual instrument time, which may include—

(i) Not more than a combined total of 20 hours of instrument instruction by an authorized instructor in a qualified and approved flight simulator or in a qualified and approved flight training device; or

(ii) Not more than 30 hours of instrument instruction accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

* * * * *

(f) [Reserved]

(g) *Practical test.* An applicant for an instrument rating must pass a practical test consisting of an oral increment and a flight increment, as follows:

(1) The flight increment required by this paragraph (g) (1) may be accomplished in any category, class, and type aircraft that is certificated for flight in instrument conditions, or in a qualified and approved flight simulator or qualified and approved flight training device.

(2) The practical test required by this paragraph (g) (2) must include instrument flight procedures, selected by the person authorized by the Administrator to conduct the practical test, to determine the applicant's ability to perform competently the IFR operations described in paragraph (c) of this section.

(3) The following requirements of the practical test must be accomplished in an aircraft or in a qualified and approved flight simulator:

(i) At least one published precision, nonprecision, and circling approach.

(ii) At least one landing.

(iii) At least one cross-country flight.

(h) *Training qualifications.* An applicant for the instrument rating who

has satisfactorily completed an approved curriculum conducted at a training center certificated under part 142 of this chapter must have—

(1) A total of at least 95 hours of pilot flight time, including at least 35 hours of simulated or actual instrument flight time; or

(2) Satisfactorily completed the requirements of an approved instrument rating course at a part 142 certified training center that has received approval from the Administrator to conduct a curriculum satisfying the requirements of the instrument rating in—

(i)Fewer than 95 hours of pilot flight time; or

(ii) Fewer than 35 hours of simulated instrument time or actual instrument time.

22. Section 61.67 is amended by revising paragraphs (a)(2), (b) introductory text, (b)(1), (b)(2), (c)(2), (d) introductory text, (d)(1) introductory text, and (d)(2), by removing the concluding text at the end of paragraph (c), and by adding paragraphs (c)(3) through (c)(7) to read as follows:

§ 61.67 Category II pilot authorization requirements.

(a) * * *

(2) A type rating for the aircraft for which the authorization is sought if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category II authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) 75 hours of instrument time under actual or simulated instrument conditions that may include not more than—

(i) A combination of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

* * * * *

(c) * * *

(2) To be eligible for the practical test, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section;

(ii) Hold the appropriate class rating; and

(iii) If the applicant has not passed a practical test for this authorization since the beginning of the twelfth calendar month, meet the following recent experience requirements—

(A) The requirements of § 61.57(e); and

(B) At least six ILS approaches since the beginning of the sixth month before the practical test, subject to the following:

(*1*) The approaches must be conducted under actual or simulated instrument flight conditions.

(*2*) The approaches must be conducted down to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted.

(3) Except as provided in paragraph (c)(4) of this section, the approaches must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted.

(4) The approaches may be accomplished in a flight simulator that—

(i) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(ii) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(5) The approaches need not be conducted down to the decision height authorized for Category II operations if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(6) At least three of the approaches required by paragraph (c)(2)(iii)(B) of this section must be conducted manually, without the use of an approach coupler.

(7) The flight time acquired in meeting the requirements of paragraph (c)(2)(iii)(B) of this section may be used to meet the requirements of paragraph (c)(2)(iii)(A) of this section.

(d) *Practical test procedures.* Oral questioning may be conducted at any time during the practical test. The practical test consists of two increments:

(1) *Oral increment.* The applicant must demonstrate knowledge of the following:

* * * * *

(2) *Flight increment.* The following requirements apply to the flight increment of a practical test:

(i) The flight increment may be conducted in an aircraft of the same category and class and type, as applicable, as the aircraft in which the authorization is sought or in a flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) At least two ILS approaches to 100 feet AGL including at least one landing and one missed approach.

(iii) All approaches must be made with the approved flight control guidance system, except that if an approved automatic approach coupler is installed, at least one approach must be hand flown using flight director commands.

(iv) If a multiengine airplane with the performance capability to execute a missed approach with one engine inoperative is used, one missed approach must be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker.

(v) If a flight simulator is used, the missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(vi) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

23. Section 61.68 is added to read as follows:

§ 61.68 Category III pilot authorization requirements.

(a) *General.* An applicant for a Category III pilot authorization must hold—

(1) A pilot certificate with an instrument rating or airline transport pilot certificate;

(2) A valid medical certificate;

(3) A category and class rating for the aircraft for which the authorization is sought; and

(4) A type rating for the aircraft for which the authorization is sought, if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category III authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) Except as provided in paragraph (c) of this section, 75 hours of instrument flight time during actual or simulated instrument conditions that may include not more than a combination of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; and

(3) 250 hours of cross-country flight time as pilot in command.

(c) *Increasing instrument flight time hours.* The instrument flight time

allowed in flight simulators or flight training devices under paragraph (b)(2) of this section may be increased to not more than 40 hours if accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Practical test required.* (1) An applicant for the issuance or renewal of a Category III authorization or for the addition of another type aircraft to an authorization must pass a practical test.

(2) If the applicant has not passed a practical test for this authorization since the beginning of the twelfth calendar month, the applicant must meet the following recency of experience requirements:

(i) The requirements of § 61.57(e).

(ii) At least six ILS approaches since the beginning of the sixth month before the practical test, subject to the following:

(A) The approaches must be conducted under actual or simulated instrument flight conditions and flown down to the minimum altitude for the ILS approach.

(B) Except as provided in paragraph (d)(2)(ii)(C) of this section, the approaches must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted.

(C) The approaches may be accomplished in a flight simulator or flight training device that—

(*1*) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought; and

(*2*) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(D) Conducted down to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(e) *Practical test procedures.* Oral questioning may be conducted at any time during the practical test. The practical test consists of two increments:

(1) *Oral increment.* The applicant must demonstrate knowledge of the following:

(i) Required landing distance.

(ii) Determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter.

(iii) Recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable.

(iv) Missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go-around or automatic go-around and initiation altitude, as applicable.

(v) The use and limitations of RVR, including determination of controlling RVR and required transmissometers.

(vi) The use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(A) Unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(B) Demonstration of expected visual references with weather at minimum conditions; and

(C) The expected sequence of visual cues during an approach in which visibility is at or above landing minima.

(vii) Procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(viii) Effects of vertical and horizontal wind shear.

(ix) Characteristics and limitations of the ILS and runway lighting system.

(x) Characteristics and limitations of the flight director system auto approach coupler (including split axis type if so equipped), auto throttle system, if applicable, and other Category III equipment, as applicable.

(xi) Assigned duties of the second in command during Category III operations, unless the aircraft for which authorization is sought does not require a second in command.

(xii) Recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout.

(xiii) Recognition of, and reaction to, airborne or ground system faults or abnormalities, particularly after passing alert height or decision height, as applicable.

(2) *Flight increment.* The following requirements apply to the flight increment of the practical test:

(i) The flight increment may be conducted in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought, or in a flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) All approaches must be made with the approved automatic landing system or an equivalent landing system approved by the Administrator and must consist of the following:

(A) At least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go-around maneuver.

(B) If a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used, a missed approach shall be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker.

(C) If a flight simulator or flight training device is used, a missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(D) Subject to the limitations of paragraph (e)(2)(ii)(E) of this section, for Category IIIb operations predicated on the use of a fail-passive rollout control system, at least one manual rollout using visual reference or a combination of visual and instrument references.

(E) The maneuver required by paragraph (e)(2)(ii)(D) of this section shall be initiated by a fail-passive disconnect of the rollout control system—

(*1*) After main gear touchdown;

(*2*) Prior to nose gear touchdown;

(*3*) In conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(*4*) In weather conditions anticipated in Category IIIb operations.

(iii) For authorizations for aircraft that require a type rating, the practical test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

24. Section 61.109 is revised to read as follows:

§ 61.109 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (h) of this section, an applicant for a private pilot certificate with an airplane category rating must have at least the following aeronautical experience:

(1) At least 20 hours of flight instruction from an authorized instructor, including at least—

(i) 3 hours of cross-country flight.

(ii) 3 hours of flight at night, including ten takeoffs and ten landings for applicants seeking night flying privileges.

(iii) 3 hours in airplanes in preparation for the private pilot

practical test within 60 calendar days prior to that test.

(2) At least 20 hours of solo flight time, including at least-

(i) 10 hours of flight in airplanes;

(ii) 10 hours of cross-country flight; and

(iii) Three solo takeoffs and landings to a full stop at an airport with an operating control tower.

(b) Each flight required by paragraph (a)(2)(ii) of this section must include—

(1) A landing at a point more than 50 nautical miles from the original departure point; and

(2) One flight of at least 300 nautical miles with landings at a minimum of three points, one of which is at least 100 nautical miles from the original departure point.

(c) An applicant who does not meet the night flying requirement of paragraph (a)(1)(ii) of this section may be issued a private pilot certificate bearing the limitation "night flying prohibited." The limitation may be removed if the holder of the certificate shows that he or she has met the requirements of paragraph (a)(1)(ii) of this section.

(d) Except as provided in paragraph (e) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing an airplane from an authorized instructor may be credited toward the total hours required by paragraph (a) of this section.

(e) A maximum of 5 hours of instruction in a flight simulator or flight training device representing an airplane may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(h) Except where fewer hours are approved by the Administrator, an applicant for a private pilot certificate with an airplane rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter need have only a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

25. Section 61.113 is revised to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

(a) Except as provided in paragraph (g) of this section, an applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(1) For a helicopter class rating, 40 hours of flight instruction and solo flight time including at least—

(i) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(A) 3 hours of cross-country flying in helicopters; and

(B) 3 hours of night flying in helicopters, including 10 takeoffs and 10 landings, each of which must be separated by an en-route phase of flight;

(ii) 3 hours in helicopters in preparation for the private pilot practical test within 60 calendar days before that test;

(iii) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other landing points; and

(ii) Three takeoffs and three landings in helicopters at airports or heliports with operating control towers, each separated by an en-route phase of flight.

(b) Except as provided in paragraph (c) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing a helicopter from an authorized instructor may be credited toward the total hour requirement of paragraph (a) of this section.

(c) A maximum of 5 hours of instruction in a flight simulator or flight training device representing a helicopter may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(d) The applicant for a gyroplane class rating must have a total of at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including at least the following—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including ten takeoffs and ten landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 calendar days before that test.

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and three landings in gyroplanes at an airport with an operating control tower.

(3) Except as provided in paragraph (d)(4) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing a gyroplane may be credited toward the total hours required by paragraph (d)(1) of this section.

(4) A maximum of 5 hours of instruction in a flight simulator or flight training device representing a gyroplane may be credited toward the total hours required by paragraph (d)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(e) An applicant who does not meet the night flying requirements of paragraph (a)(1)(i)(B) or paragraph (d)(1)(ii) of this section will be issued a private pilot certificate bearing the limitation "night flying prohibited."

(f) The limitation required by paragraph (e) of this section may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(i)(B) or paragraph (d)(1)(ii) of this section, as applicable.

(g) Except where fewer hours are approved by the Administrator, an applicant for a private pilot certificate with a rotorcraft category rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter need have only a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

26. Section 61.129 is amended by revising paragraph (b) introductory text and (b)(1) and (b)(2) introductory text, and by adding paragraphs (b)(4) and (c) to read as follows:

§ 61.129 Airplane rating: Aeronautical experience.

* * * * *

(b) *Flight time as pilot.* Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with an airplane rating must have at least the following aeronautical experience:

(1) A total of at least 250 hours of flight time as a pilot that may include not more than—

(i) Except as provided in paragraph (b)(1)(ii) of this section, 50 hours of flight simulator instruction or flight training device instruction from an authorized instructor; or

(ii) 100 hours of flight simulator instruction or flight training device instruction, if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(2) The flight time required by paragraph (b)(1) of this section must include—

* * * * *

(4) Flight simulator instruction and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device representing an airplane.

(c) Except where fewer hours are approved by the Administrator, an applicant for a commercial pilot certificate with an airplane rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 190 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

27. Section 61.131 is amended by revising the introductory text, paragraph (b) introductory text and (b)(1) introductory text, and by adding paragraphs (a)(3), (a)(4), (b)(3), (b)(4), and (c) to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement for a pilot certificate.

(4) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) For a gyroplane class rating:

(1) An applicant must have at least 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total requirement for a pilot certificate if the instruction is accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 50 hours of flight simulator instruction or flight training device if instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with a rotorcraft rating and a helicopter class rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 150 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

28. Section 61.155 is revised to read as follows:

§ 61.155 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (d) of this section, for an applicant for an airline transport pilot certificate with an airplane category and class rating, the following requirements apply:

(1) The applicant must hold a commercial pilot certificate, a foreign airline transport pilot, or commercial pilot license without limitations issued by a member state of ICAO, or meet the requirements of § 61.73 that would qualify the applicant for a commercial pilot certificate;

(2) The applicant must have at least 1,500 hours of total time as a pilot that includes at least—

(i) 500 hours of cross-country flight time;

(ii) 100 hours of night flight time;

(iii) 75 hours of instrument flight time, in actual or simulated instrument conditions, subject to the following:

(A) Except as provided in paragraph (a)(2)(iii)(B) of this section, an applicant may not receive more than 25 hours of simulated instrument time in flight simulators and flight training devices.

(B) A maximum of 50 hours of instruction in a flight simulator or flight training device may be credited toward the total hours required by paragraph (a)(2) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(C) Instruction in a flight simulator or flight training device must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing an airplane; and

(iv) 250 hours of flight time in an airplane as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—

(A) 100 hours of cross-country flight time; and

(B) 25 hours of night flight time; and

(3) Not more than 100 hours of total pilot experience may be obtained in a flight simulator or flight training device, provided the pilot experience is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) An applicant who has performed at least 20 night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop in excess of the minimum 20 takeoffs for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section, for a total credited time of no more than 25 hours.

(c) If an applicant with less than 150 hours of pilot-in-command time otherwise meets the requirements of paragraph (a)(2)(iv) of this section, the applicant's certificate will be endorsed "Holder does not meet the pilot-in-command flight experience requirement of ICAO", as prescribed by article 39 of the "Convention on International Civil Aviation." Whenever the pilot presents satisfactory written evidence that 150 hours of pilot-in-command time has been accumulated, the applicant is entitled to a new certificate without the endorsement.

(d) A commercial pilot may credit the following second-in-command and flight engineer flight time (or a combination of either crewmember position flight time) toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:

(1) All second-in-command time acquired in an airplane required to have more than one pilot by the airplane's flight manual or type certificate or by the regulations under which the flight is conducted.

(2) Flight engineer time, provided the time—

(i) Is acquired in an airplane that is required to have a flight engineer by the airplane's flight manual, the type

certificate, or the regulations under which the flight is conducted;

(ii) Is acquired while the applicant is participating in a pilot training program approved under part 121 of this chapter; and

(iii) Is credited at a rate of 1 hour of flight time for each 3 hours of flight engineer time, for a total credited time of no more than 500 hours.

(e) If an applicant who credits second-in-command or flight engineer time under paragraph (d) of this section toward the 1,500 hours total flight time requirement of paragraph (a)(2) of this section—

(1) Does not have at least 1,200 hours of flight time as a pilot including not more than 50 percent of the second-in-command time and none of the flight engineer time; but

(2) Otherwise meets the requirements of paragraph (a)(2) of this section, the applicant's certificate will be endorsed "Holder does not meet the pilot flight experience requirements of ICAO," as prescribed by article 39 of the "Convention on International Civil Aviation." Whenever the applicant presents satisfactory evidence of having accumulated 1,200 hours of flight time as a pilot including no more than 50 percent of the second-in-command time and none of the flight engineer time, the applicant is entitled to a new certificate without the endorsement.

29. Section 61.157 is amended by revising the section heading and adding a new paragraph (g) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill (for parts 121 and 135 use only).

* * * * *

(g) Successful completion of a proficiency check under § 121.441 of this chapter or successful completion of both a competency check, under § 135.293 of this chapter, and a pilot-in-command instrument proficiency check, under § 135.297 of this chapter, satisfies the requirements of this section for the appropriate aircraft rating.

30. Section 61.158 is added to read as follows:

§ 61.158 Airplane rating: Aeronautical skill (for other than parts 121 and 135).

(a) An applicant for an airline transport pilot certificate with a single engine or multiengine class rating or type rating, must—

(1) Pass a practical test based on the following areas of operation:

(i) Preflight procedures.

(ii) Ground operations.

(iii) Takeoff and departure maneuvers.

(iv) In-flight maneuvers.

(v) Instrument procedures.

(vi) Landings and approaches to landings.

(vii) Normal and abnormal procedures.

(viii) Emergency procedures.

(ix) Postflight procedures.

(2) If seeking an airplane type rating, present a record of training certified by an authorized instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas required by this section applicable to the airplane type rating sought; and

(ii) Received flight training on the areas of operation applicable to the airplane type rating sought.

(b) If the applicant does not hold an instrument rating, in addition to the areas specified in paragraph (a)(1) of this section, the applicant must also demonstrate competency in the operations referenced in § 61.65(g).

(c) The demonstrations required by paragraphs (a) and (b) of this section must be performed in—

(1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or

(2) Subject to the requirements of paragraphs (d)(1) through (d)(8) of this section, as applicable, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought, does not require a type rating.

(d) The following requirements apply to a demonstration of competency under this section in a flight simulator or a flight training device;

(1) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be in accordance with an approved course at a training center certificated under part 142 of this chapter;

(2) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.155 and at least one of the following:

(A) Hold a type rating for a turbojet airplane of the same class as the class of airplane for which the type rating is sought or have been designated by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbojet type rating is sought.

(B) Hold a type rating for a turbopropeller airplane of the same class as the class of airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbopropeller airplane type rating is sought.

(C) Have at least 2,000 hours of actual flight time, of which 500 hours must be in turbine-powered airplanes of the same class as the class of airplane for which the type rating is sought.

(D) Have at least 500 hours of actual flight time in the same type airplane as the type of airplane for which the type rating is sought.

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(3) Subject to the limitation of paragraph (d)(4) of this section an applicant who does not meet the requirements of paragraph (d)(2) of this section may complete all training and testing (except for preflight inspection) for an added rating if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.155 and at least one of the following:

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought.

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the added rating, has logged—

(*1*) At least 100 hours of flight time in airplanes in the same class as the class of airplane for which the type rating is sought and which require a type rating; and

(*2*) At least 25 hours of flight time in airplanes of the same type as the type of airplane for which the type rating is sought.

(4) An applicant meeting only the requirements of paragraph (d)(3)(ii)(A) and (B) of this section will be issued an added rating, or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(5) An applicant gaining a certificate with the limitation specified in paragraph (d)(4) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type as the type of airplane to which the limitation applies.

(6) An applicant who does not meet the requirements of paragraph (d)(2)(ii)(A) through (E) or (d)(3)(ii)(A) and (B) of this section may be awarded an airline transport pilot certificate or an added rating to that certificate after successful completion of one of the following requirements:

(i) An approved course at a training center which includes all training and testing for that certificate or rating followed by training and testing on the following tasks, which must be successfully completed on a static airplane or in flight, as appropriate:

(A) Preflight inspection;

(B) Normal takeoff;

(C) Normal ILS approach;

(D) Missed approach; and

(E) Normal landing.

(ii) An approved course at a training center which includes all training and testing for that certificate or rating and compliance with paragraphs (d)(7) and (d)(8) of this section.

(7) An applicant meeting only the requirements of paragraph (d)(6) of this section will be issued an added rating, or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (d)(7) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type as the type of airplane to which the limitation applies.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

31. Section 61.161 is amended by revising paragraph (b)(4) and by adding a new paragraph (b)(5) to read as follows:

§ 61.161 Rotorcraft rating: Aeronautical experience.

* * * * *

(b) * * *

(4) 75 hours of actual or simulated instrument time under actual or simulated conditions. At least 50 hours of this time must be completed in flight with at least—

(i) 25 hours in helicopters as pilot in command;

(ii) 25 hours in helicopters as second in command performing the duties of a pilot in command under the supervision of a pilot in command; or

(iii) Any combination of paragraph (b)(4)(i) and (b)(4)(ii) of this section that totals 25 hours in helicopters.

(5) Flight simulator or flight training device instruction may be credited toward the total hour requirement of paragraph (b)(4) of this section subject to the following:

(i) Flight simulator and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing a rotorcraft.

(ii) Except as provided in paragraph (b)(5)(iii) of this section, an applicant may receive credit for not more than a combined total of 25 hours of simulated instrument time in flight simulators and flight training devices.

(iii) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b)(4) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

32. Section 61.163 is revised to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating must pass a practical test based on the following areas of operation:

(1) Preflight procedures.

(2) Ground operations.

(3) Takeoff and departure procedures.

(4) In-flight maneuvers.

(5) Instrument procedures.

(6) Landings and approaches to landings.

(7) Normal and abnormal procedures.

(8) Emergency procedures.

(9) Postflight procedures.

(b) If the applicant does not hold an instrument rating, in addition to the areas specified in paragraph (a) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g).

(c) The demonstrations required by paragraphs (a) and (b) of this section must be performed in—

(1) The helicopter for which the class rating or type rating is sought; or

(2) Subject to the requirements of paragraphs (d)(1) through (d)(8) of this section, as applicable, a flight simulator or flight training device that represents the helicopter for which the class rating or type rating is sought.

(d) The following requirements apply to a demonstration of competency under this section in a flight simulator or a flight training device:

(1) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be in accordance with an approved course at a training center certificated under part 142 of this chapter.

(2) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.161 and at least one of the following:

(A) Hold a type rating for a turbine-powered helicopter, or have been designated by a military service as a pilot in command of an a turbine-powered helicopter, if a turbine-powered helicopter type rating is sought.

(B) Have at least 1,200 hours of actual flight time, of which 500 hours must be in turbine-powered helicopters.

(C) Have at least 500 hours of actual flight time in the same type helicopter as the helicopter for which the type rating is sought.

(D) Have at least 1,000 hours of flight time in at least two different helicopters requiring a type rating.

(3) Subject to the limitation of paragraph (d)(4) of this section, an applicant who does not meet the requirements of paragraph (d)(2) of this section may complete all training and testing (except for preflight inspection) for an added rating if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.161 and, since the beginning of the 12th calendar month before the month in which the applicant completes the

practical test for the added rating, has logged—

(A) At least 100 hours of flight time in helicopters; and

(B) At least 15 hours of flight time in helicopters of the same type as the helicopter for which the type rating is sought.

(4) An applicant meeting only the requirements of paragraph (d)(3)(ii) (A) and (B) of this section will be issued an added rating, or an airline transport pilot certificate with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(5) An applicant gaining a certificate with the limitation specified in paragraph (d)(4) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the type of aircraft to which the limitation applies.

(6) An applicant who does not meet the requirements of paragraph (d)(2)(ii) (A) through (D) or (d)(3)(ii) (A) and (B) of this section may be awarded an airline transport pilot certificate or an added rating to that certificate after successful completion of the of one of the following requirements:

(i) An approved course at a training center which includes all training and testing for that certificate or rating followed by training and testing on the following tasks, which must be successfully completed on a static aircraft or in flight, as appropriate:

(A) Preflight inspection;

(B) Normal takeoff from a hover;

(C) Manually flown precision approach; and

(D) Steep approach and landing to an off-airport heliport;

(ii) An approved course at a training center which includes all training and testing for that certificate or rating and compliance with paragraphs (d)(7) and (d)(8) of this section.

(7) An applicant meeting only the requirements of paragraph (d)(6) of this section will be issued an added rating or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (d)(7) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the type of aircraft to which the limitation applies.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

33. Section 61.169 is revised to read as follows:

§ 61.169 Instruction in air transportation service.

(a) An airline transport pilot may instruct—

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated;

(2) In flight simulators and flight training devices representing the aircraft referenced in paragraph (a)(1) of this section, when instructing under the provisions of this section;

(3) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case he or she may exercise the instructor privileges of subpart G of part 61 for which he or she is rated; and

(4) When instructing under the provisions of this section in an actual aircraft, only if the aircraft has functioning dual controls, when instructing under the provisions of this section.

(b) Excluding briefings and debriefings, an airline transport pilot may not instruct in aircraft, flight simulators, and flight training devices under this section—

(1) For more than 8 hours in any 24-consecutive-hour period; or

(2) For more than 36 hours in any 7-consecutive-day period.

(c) An airline transport pilot may not instruct in Category II or Category III operations unless he or she has been trained and successfully tested under Category II or Category III operations, as applicable.

34. Section 61.187 is amended by adding a new paragraph (c) to read as follows:

§ 61.187 Flight proficiency.

* * * * *

(c) The flight instruction required by this section may be accomplished—

(1) In an aircraft; or

(2) In a flight simulator or in a flight training device used in accordance with an approved course at a training center certificated under part 142 of this chapter.

35. Section 61.191 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 61.191 Additional flight instructor ratings.

* * * * *

(c) Pass the written and practical test prescribed in this subpart for the rating sought.

(d) If accomplished in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, the practical test may be conducted in a flight simulator, or a flight training device.

36. Section 61.195 is amended by adding paragraph (h) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(h) A flight instructor may not give instruction in Category II or Category III operations unless the flight instructor has been trained and tested in Category II or Category III operations, pursuant to § 61.67 or § 61.68, as applicable.

37. Section 61.197 is revised to read as follows:

§ 61.197 Renewal of flight instructor certificates.

(a) Except as provided in paragraph (b) of this section, the holder of a flight instructor certificate may renew that certificate for an additional period of 24 calendar months if that individual satisfactorily completes a practical test for—

(1) Renewal of the flight instructor certificate and rating sought; or

(2) An additional flight instructor rating.

(b) The holder of a flight instructor certificate may renew that certificate and its ratings without accomplishing a practical test, by presenting to an FAA Flight Standards District Office evidence of one of the following:

(1) A record showing that, during the preceding 24 calendar months, the instructor has served—

(i) As a company check pilot;

(ii) As a chief flight instructor;

(iii) As a company check airman or flight instructor in a part 121 or part 135 operation; or

(iv) In a comparable position involving the regular evaluation of pilots.

(2) A graduation certificate from an approved flight instructor refresher course, provided that—

(i) The course was completed prior to the expiration date of the flight instructor certificate; and

(ii) The course consists of not less than 24 hours of ground training, flight training, or a combination of ground training and flight training.

(c) If an instructor satisfactorily completes the requirements of this section within 90 calendar days prior to the expiration date of the flight instructor certificate, the instructor is considered to have completed the requirements of this section prior to the expiration date, and the certificate will be renewed for an additional 24 calendar months beyond the expiration date.

(d) Except as allowed by paragraph (e) of this section, the practical test required by paragraph (a) of this section must be conducted in an aircraft.

(e) The practical test required by paragraph (a) of this section may be accomplished in a flight simulator or in a flight training device if the test is accomplished pursuant to an approved course conducted by a training center certificated under part 142 of this chapter.

38. Part 61, appendix A is amended by revising the heading to read as follows:

Appendix A to Part 61—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings (For Parts 121 and 135 Use Only)

39. Part 61, appendix B, is removed.

PART 91—GENERAL OPERATING AND FLIGHT RULES

40. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

41. Section 91.191 is revised to read as follows:

§ 91.191 Category II and Category III manual.

(a) Except as provided in paragraph (c) of this section, after August 4, 1997, no person may operate a U.S.-registered civil aircraft in a Category II or a Category III operation unless—

(1) There is available in the aircraft a current and approved Category II or Category III manual, as appropriate, for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in the appropriate manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II or Category III operation have been inspected and maintained in accordance with the maintenance program contained in the manual.

(b) Each operator must keep a current copy of each approved manual at its principal base of operations and must make each manual available for inspection upon request by the Administrator.

(c) This section does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

42. Section 91.205 is amended by revising paragraph (f) and adding a new paragraph (g) and (h) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(f) *Category II operations.* The requirements for Category II operations are the instruments and equipment specified in—

(1) Paragraph (d) of this section; and

(2) Appendix A to this part.

(g) *Category III operations.* The instruments and equipment required for Category III operations are specified in paragraph (d) of this section.

(h) *Exclusions.* Paragraphs (f) and (g) of this section do not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

43. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

43A. Section 2 of SFAR 58 is amended by revising the definition of "training center" to read as follows:

2. *Definitions.*

* * * * *

Training center means an organization certificated under part 142 of this chapter or an organization approved by the Administrator to operate under the terms of this SFAR to provide training as described in section 1(b) of SFAR 58.

* * * * *

43B. Section 11 of SFAR 58 is amended by adding a new paragraph (d) to read as follows:

11. *Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement.*

* * * * *

(d) Approval for the training, qualification, or evaluation by a person who provides training by arrangement authorized by this section expires on August 3, 1998 unless that person meets the eligibility requirements specified under § 121.402 or § 135.324 of this chapter. After August 2, 1998 approval for the training, qualification, or evaluation, by a person who provides training by arrangement authorized by this section, shall be granted only to persons who meet the eligibility requirements specified under § 121.402 or § 135.234 of this chapter.

* * * * *

44. Section 121.400 is amended by adding new paragraphs (c)(7) and (c)(8).

§ 121.400 Applicability and terms used.

* * * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the recurrent training requirements of § 121.427 or the proficiency check requirements of § 121.441.

45. Section 121.402 is added to read as follows:

§ 121.402 Training program: Special Rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to provide training, testing, and checking required by this part only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructor and check airmen qualified under the applicable requirements of §§ 121.411 or 121.413 to provide training, testing, and checking to persons subject to the requirements of this subpart.

46. Section 121.431 is amended by revising paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) This subpart:

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified. The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter. The Administrator may authorize any other certificate holder that conducts operations under part 135 of this chapter to comply with the training and qualification requirements of this subpart instead of subparts E, G, and H of part 135 of this chapter, except that these certificate holders may choose to comply with the operating experience requirements of § 135.344 of this chapter, instead of the requirements of § 121.434; and

(2) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of §§ 121.411 and 121.413 to provide training, testing and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

47. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

48. Section 125.285 is amended by revising the introductory text of paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 125.285 Pilot qualifications: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required pilot flight crewmember unless within the preceding 90 calendar days that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a flight simulator if the flight simulator is qualified and approved by the Administrator for such purpose. * * *

* * * * *

(c) A required pilot flight crewmember who performs the maneuvers required by paragraph (b) of this section in a qualified and approved flight simulator, as prescribed in paragraph (a) of this section, must—

* * * * *

49. Section 125.296 is added to read as follows:

§ 125.296 Training, testing, and checking conducted by training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, is considered to meet applicable requirements of this part.

50. Section 125.297 is amended by revising the section heading and paragraph (a) and (b) introductory text to read as follows:

§ 125.297 Approval of flight simulators and flight training devices.

(a) Flight simulators and flight training devices approved by the Administrator may be used in training, testing, and checking required by this subpart.

(b) Each flight simulator and flight training device that is used in training, testing, and checking required under this subpart must be used in accordance with an approved training course conducted by a training center certificated under part 142 of this chapter, or meet the following requirements:

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

51. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

52. Section 135.291 is revised to read as follows:

§ 135.291 Applicability.

Except as provided in § 135.3, this subpart—

(a) Prescribes the tests and checks required for pilot and flight attendant crewmembers and for the approval of check pilots in operations under this part; and

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 135.337 and § 135.339 to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

53. Section 135.321 is amended by revising paragraph (a) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 135.321 Applicability and terms used.

(a) Except as provided in § 135.3, this subpart prescribes the requirements applicable to—

(1) A certificate holder under this part which contracts with, or otherwise arranges to use the services of a training center certificated under part 142 to perform training, testing, and checking functions;

(2) Each certificate holder for establishing and maintaining an approved training program for crewmembers, check airmen and instructors, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of aircraft simulators and flight training devices in the conduct of the program.

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the—

(i) Recurrent pilot testing requirements of § 135.293;

(ii) Instrument proficiency check requirements of § 135.297; or

(iii) Line checks required by § 135.299.

54. Section 135.324 is added to read as follows:

§ 135.324 Training program: Special Rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holer may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to provide training, testing, and checking required by this part only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructor and check airmen qualified under the applicable requirements of §§ 135.337 or 135.339 to provide training, testing, and checking to persons subject to the requirements of this subpart.

PART 141—PILOT SCHOOLS

55. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

56. Section 141.26 is added to read as follows:

§ 141.26 Training agreements.

A training center certificated under part 142 of this chapter may provide the training, testing, and checking for pilot schools certificated under part 141 of this chapter and is considered to meet the requirements of part 141 provided—

(a) There is a training agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated training center is approved and conducted under part 142;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the training, testing, and checking to be conducted under part 141 and the training, testing, and checking to be conducted under part 142 of this chapter; and

(d) Upon completion of the training, testing, and checking conducted under part 142 of this chapter, a copy of each student's training record is forwarded to the part 141 school and becomes part of the student's permanent training record.

57. Part 142 is added to read as follows:

PART 142—TRAINING CENTERS

Subpart A—General

§ 142.1 Applicability.
§ 142.3 Definitions.
§ 142.5 Certificate and training specifications required.
§ 142.7 Duration of a certificate.
§ 142.9 Deviations or waivers.
§ 142.11 Application for issuance or amendment.
§ 142.13 Management and personnel requirements.
§ 142.15 Facilities.
§ 142.17 Satellite training centers.
§ 142.19 Foreign training centers: Special rules.
§ 142.21–142.25 [Reserved]
§ 142.27 Display of certificate.
§ 142.29 Inspections.
§ 142.31 Advertising limitations.
§ 142.33 Training agreements.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability.
§ 142.37 Approval of flight aircrew training program.
§ 142.39 Training program curriculum requirements.

Subpart C—Personnel and Flight Training Equipment Requirements

§ 142.45 Applicability.
§ 142.47 Training center instructor eligibility requirements.
§ 142.49 Training center instructor and evaluator privileges and limitations.
§ 142.51 [Reserved]
§ 142.53 Training center instructor training and testing requirements.
§ 142.55 Training center evaluator requirements.
§ 142.57 Aircraft requirements.
§ 142.59 Flight simulators and flight training devices.

Subpart D—Operating Rules

§ 142.61 Applicability.
§ 142.63 Privileges.
§ 142.65 Limitations.

Subpart E—Recordkeeping

§ 142.71 Applicability.
§ 142.73 Recordkeeping requirements.

Subpart F—Other Approved Courses

§ 142.81 Conduct of other approved courses.

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

Subpart A— General

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 121, 125, 127, 135, and 137;

(2) Approved under SFAR 58, Advanced Qualification Programs, for the authorization holder's own employees;

(3) Conducted under part 61 unless that part requires certification under this part;

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder; or

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder.

(c) Except as provided in paragraph (b) of this section, after August 3, 1998, no person may conduct training, testing, or checking in advanced flight training devices or flight simulators without, or in violation of, the certificate and training specifications required by this part.

§ 142.3 Definitions.

As used in this part:

Advanced Flight Training Device as used in this part, means a flight training device as defined in part 61 of this chapter that has a cockpit that accurately replicates a specific make, model, and type aircraft cockpit, and handling characteristics that accurately model the aircraft handling characteristics.

Core Curriculum means a set of courses approved by the Administrator, for use by a training center and its satellite training centers. The core curriculum consists of training which is required for certification. It does not include training for tasks and circumstances unique to a particular user.

Course means—

(1) A program of instruction to obtain pilot certification, qualification, authorization, or currency;

(2) A program of instruction to meet a specified number of requirements of a program for pilot training, certification, qualification, authorization, or currency; or

(3) A curriculum, or curriculum segment, as defined in SFAR 58 of part 121 of this chapter.

Courseware means instructional material developed for each course or curriculum, including lesson plans, flight event descriptions, computer software programs, audiovisual programs, workbooks, and handouts.

Evaluator means a person employed by a training center certificate holder who performs tests for certification, added ratings, authorizations, and proficiency checks that are authorized by the certificate holder's training specification, and who is authorized by the Administrator to administer such checks and tests.

Flight training equipment means flight simulators, as defined in § 61.1(a) of this chapter, flight training devices, as defined in § 61.1(a) of this chapter, and aircraft.

Instructor means a person employed by a training center and designated to provide instruction in accordance with subpart C of this part.

Line-Operational Simulation means simulation conducted using operational-oriented flight scenarios that accurately replicate interaction among flightcrew members and between flightcrew members and dispatch facilities, other crewmembers, air traffic control, and ground operations. Line operational simulation simulations are conducted for training and evaluation purposes and include random, abnormal, and emergency occurrences. Line operational simulation specifically includes line-oriented flight training, special purpose operational training, and line operational evaluation.

Specialty Curriculum means a set of courses that is designed to satisfy a requirement of the Federal Aviation Regulations and that is approved by the Administrator for use by a particular training center or satellite training center. The specialty curriculum includes training requirements unique to one or more training center clients.

Training center means an organization governed by the applicable requirements of this part that provides training, testing, and checking under contract or other arrangement to airmen subject to the requirements of this chapter.

Training program consists of courses, courseware, facilities, flight training equipment, and personnel necessary to accomplish a specific training objective. It may include a core curriculum and a specialty curriculum.

Training specifications means a document issued to a training center certificate holder by the Administrator that prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements.

§ 142.5 Certificate and training specifications required.

(a) No person may operate a certificated training center without, or in violation of, a training center certificate and training specifications issued under this part.

(b) An applicant will be issued a training center certificate and training specifications with appropriate limitations if the applicant shows that it has adequate facilities, equipment, personnel, and courseware required by § 142.11 to conduct training approved under § 142.37.

§ 142.7 Duration of a certificate.

(a) Except as provided in paragraph (b) of this section, a training center certificate issued under this part is effective until the certificate is surrendered or until the Administrator suspends, revokes, or terminates it.

(b) Unless sooner surrendered, suspended, or revoked, a certificate issued under this part for a training center located outside the United States expires at the end of the twelfth month after the month in which it is issued or renewed.

(c) If the Administrator suspends, revokes, or terminates a training center certificate, the holder of that certificate shall return the certificate to the Administrator within 5 working days after being notified that the certificate is suspended, revoked, or terminated.

§ 142.9 Deviations or waivers.

(a) The Administrator may issue deviations or waivers from any of the requirements of this part.

(b) A training center applicant requesting a deviation or waiver under this section must provide the Administrator with information acceptable to the Administrator that shows—

(1) Justification for the deviation or waiver; and

(2) That the deviation or waiver will not adversely affect the quality of instruction or evaluation.

§ 142.11 Application for issuance or amendment.

(a) An application for a training center certificate and training specifications shall—

(1) Be made on a form and in a manner prescribed by the Administrator;

(2) Be filed with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office is located; and

(3) Be made at least 120 calendar days before the beginning of any proposed training or 60 calendar days before effecting an amendment to any approved training, unless a shorter filing period is approved by the Administrator.

(b) Each application for a training center certificate and training specification shall provide—

(1) A statement showing that the minimum qualification requirements for each management position are met or exceeded;

(2) A statement acknowledging that the applicant shall notify the Administrator within 10 working days of any change made in the assignment of persons in the required management positions;

(3) The proposed training authorizations and training specifications requested by the applicant;

(4) The proposed evaluation authorization;

(5) A description of the flight training equipment that the applicant proposes to use;

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

(7) A training program curriculum, including syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B of this part, upon request by the Administrator;

(8) A description of a recordkeeping system that will identify and document the details of training, qualification, and certification of students, instructors, and evaluators;

(9) A description of quality control measures proposed; and

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

(c) The facilities and equipment described in paragraph (b)(6) of this section shall—

(1) Be available for inspection and evaluation prior to approval; and

(2) Be in place and operational at the location of the proposed training center prior to issuance of a certificate under this part.

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

(1) A training center certificate containing all business names included on the application under which the certificate holder may conduct operations and the address of each business office used by the certificate holder; and

(2) Training specifications, issued by the Administrator to the certificate holder, containing—

(i) The type of training authorized, including approved courses;

(ii) The category, class, and type of aircraft that may be used for training, testing, and checking;

(iii) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(iv) For each flight simulator and flight training device subject to qualification evaluation by the Administrator, the identification number assigned by the FAA;

(v) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vi) Authorized deviations or waivers from this part; and

(vii) Any other items the Administrator may require or allow.

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that the applicant or the certificate holder—

(1) Held a training center certificate that was revoked, suspended, or terminated within the previous 5 years; or

(2) Employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position by the holder of a training center certificate that was revoked, suspended, or terminated within the previous 5 years;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

(3) Has provided incomplete, inaccurate, fraudulent, or false information for a training center certificate;

(4) Has violated any provision of § 142.21; or

(5) Should not be granted a certificate if the grant would not foster aviation safety.

(f) At any time, the Administrator may amend a training center certificate—

(1) On the Administrator's own initiative, under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), as amended, and part 13 of this chapter; or

(2) Upon timely application by the certificate holder.

(g) The certificate holder must file an application to amend a training center certificate at least 60 calendar days prior to the applicant's proposed effective amendment date unless a different filing period is approved by the Administrator.

§ 142.13 Management and personnel requirements.

An applicant for a training center certificate must show that—

(a) For each proposed curriculum, the training center has, and shall maintain, a sufficient number of instructors who are qualified in accordance with subpart C of this part to perform the duties to which they are assigned;

(b) The training center has designated, and shall maintain, a sufficient number of approved evaluators to provide required checks and tests to graduation candidates within 7 calendar days of training completion for any curriculum leading to airman certificates or ratings, or both;

(c) The training center has, and shall maintain, a sufficient number of management personnel who are qualified and competent to perform required duties; and

(d) A management representative, and all personnel who are designated by the training center to conduct direct student training, are able to understand, read, write, and fluently speak the English language.

§ 142.15 Facilities.

(a) An applicant for, or holder of, a training center certificate shall ensure that—

(1) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(2) The facilities used for instruction are not routinely subject to significant distractions caused by flight operations and maintenance operations at the airport.

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that is physically located at the address shown on its training center certificate.

(c) The records required to be maintained by this part must be located in facilities adequate for that purpose.

(d) An applicant for, or holder of, a training center certificate must have available exclusively, for adequate periods of time and at a location approved by the Administrator, adequate flight training equipment and courseware, including at least one flight simulator or advanced flight training device.

(e) A training center certificate may be issued to an applicant having a business office or training center located outside the United States.

§ 142.17 Satellite training centers.

(a) The holder of a training center certificate may conduct training in accordance with an approved training program at a satellite training center located in the United States if—

(1) The facilities, equipment, personnel, and course content of the satellite training center meet the applicable requirements of this part;

(2) The instructors and evaluators at the satellite training center are under the direct supervision of management personnel of the principal training center;

(3) The Administrator is notified in writing that a particular satellite is to begin operations at least 60 days prior to proposed commencement of operations at the satellite training center; and

(4) The certificate holder's training specifications reflect the name and address of the satellite training center and the approved courses offered at the satellite training center.

(b) The certificate holder's training specifications shall prescribe the operations required and authorized at each satellite training center.

§ 142.19 Foreign training centers: Special rules.

(a) In the discretion of the Administrator, a training center located outside the United States may be certificated by the Administrator pursuant to this part.

(b) A training center located outside the United States may prepare and recommend U.S. applicants for airman certificates and may prepare and recommend applicants for authorizations, endorsements, and added ratings to FAA-issued certificates, and may issue such certificates, authorizations, endorsements, and added ratings to the extent authorized and approved by the Administrator.

(c) In addition to the authority provided under paragraph (b) of this section, a training center located outside the United States, when authorized by the Administrator, may provide any training, testing, or checking that is required to satisfy a requirement of 14 CFR chapter I.

§ 142.21–142.25 [Reserved]

§ 142.27 Display of certificate.

(a) Each holder of a training center certificate must prominently display that certificate in a place accessible to the public in the principal business office of the training center.

(b) A training center certificate and training specifications must be made available for inspection upon request by—

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement agency.

§ 142.29 Inspections.

Each certificate holder must allow the Administrator to inspect training center facilities, equipment, and records at any reasonable time and in any reasonable place in order to determine compliance with or to determine initial or continuing eligibility under 49 U.S.C. 44701, 44707, formerly the Federal Aviation Act of 1958, as amended, and the training center's certificate and training specifications.

§ 142.31 Advertising limitations.

(a) A certificate holder may not conduct, and may not advertise to conduct, any training, testing, and checking that is not approved by the Administrator if that training is designed to satisfy any requirement of this chapter.

(b) A certificate holder whose certificate has been surrendered, suspended, revoked, or terminated must—

(1) Promptly remove all indications, including signs, wherever located, that the training center was certificated by the Administrator; and

(2) Promptly notify all advertising agents, or advertising media, or both, employed by the certificate holder to cease all advertising indicating that the training center is certificated by the Administrator.

§ 142.33 Training agreements.

A pilot school certificated under part 141 of this chapter may provide training, testing, and checking for a training center certificated under this part if—

(a) There is a training, testing, and checking agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated pilot school is approved and conducted in accordance with this part;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the portion of the training, testing, and checking to be conducted under part 141; and

(d) Upon completion of training, testing, and checking conducted under part 141, a copy of each student's training record is forwarded to the part 142 training center and becomes part of the student's permanent training record.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability.

This subpart prescribes the curriculum and syllabus requirements for the issuance of a training center certificate and training specifications for training, testing, and checking conducted to meet the requirements of part 61 of this chapter.

§ 142.37 Approval of flight aircrew training program.

(a) Except as provided in paragraph (b) of this section, each applicant for, or holder of, a training center certificate must apply to the Administrator for training program approval.

(b) A curriculum approved under SFAR 58 of part 121 of this chapter is approved under this part without modifications.

(c) Application for training program approval shall be made in a form and in a manner acceptable to the Administrator.

(d) Each application for training program approval must indicate—

(1) Which courses are part of the core curriculum and which courses are part of the specialty curriculum;

(2) Which requirements of part 61 of this chapter would be satisfied by the curriculum or curriculums; and

(3) Which requirements of part 61 of this chapter would not be satisfied by the curriculum or curriculums.

(e) If, after a certificate holder begins operations under an approved training program, the Administrator finds that the certificate holder is not meeting the provisions of its approved training program, the Administrator may require the certificate holder to make revisions to that training program.

(f) If the Administrator requires a certificate holder to make revisions to an approved training program and the certificate holder does not make those required revisions, within 30 calendar days, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of § 142.11(e).

§ 142.39 Training program curriculum requirements.

Each training program curriculum submitted to the Administrator for approval must meet the applicable requirements of this part and must contain—

(a) A syllabus for each proposed curriculum;

(b) Minimum aircraft and flight training equipment requirements for each proposed curriculum;

(c) Minimum instructor and evaluator qualifications for each proposed curriculum;

(d) A curriculum for initial training and continuing training of each instructor or evaluator employed to instruct in a proposed curriculum; and

(e) For each curriculum that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter—

(1) A means of demonstrating the ability to accomplish such training in the reduced number of hours; and

(2) A means of tracking student performance.

Subpart C—Personnel and Flight Training Equipment Requirements

§ 142.45 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a certificate holder that is training to meet the requirements of part 61 of this chapter.

§ 142.47 Training center instructor eligibility requirements.

(a) A certificate holder may not employ a person as an instructor in a flight training course that is subject to approval by the Administrator unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and speak and understand in the English language;

(3) If instructing in an aircraft in flight, is qualified in accordance with subpart G of part 61 of this chapter;

(4) Satisfies the requirements of paragraph (c) of this section; and

(5) Meets at least one of the following requirements—

(i) Except as allowed by paragraph (a)(5)(ii) of this section, meets the aeronautical experience requirements of § 61.129 or § 61.131 of this chapter, as applicable, excluding the required hours of instruction in preparation for the commercial pilot practical test;

(ii) If instructing in a flight simulator or flight training device that represents an airplane requiring a type rating or if instructing in a curriculum leading to the issuance of an airline transport pilot certificate or an added rating to an

airline transport pilot certificate, meets the aeronautical experience requirements of § 61.155 or § 61.161 of this chapter, as applicable; or

(iii) Is employed as a flight simulator instructor or a flight training device instructor for a training center providing instruction and testing to meet the requirements of part 61 of this chapter on August 1, 1996.

(b) A training center must designate each instructor in writing to instruct in each approved course, prior to that person functioning as an instructor in that course.

(c) Prior to initial designation, each instructor shall:

(1) Complete at least 8 hours of ground training on the following subject matter:

(i) Instruction methods and techniques.

(ii) Training policies and procedures.

(iii) The fundamental principles of the learning process.

(iv) Instructor duties, privileges, responsibilities, and limitations.

(v) Proper operation of simulation controls and systems.

(vi) Proper operation of environmental control and warning or caution panels.

(vii) Limitations of simulation.

(viii) Minimum equipment requirements for each curriculum.

(ix) Revisions to the training courses.

(x) Cockpit resource management and crew coordination.

(2) Satisfactorily complete a written test—

(i) On the subjects specified in paragraph (c)(1) of this section; and

(ii) That is accepted by the Administrator as being of equivalent difficulty, complexity, and scope as the tests provided by the Administrator for the flight instructor airplane and instrument flight instructor knowledge tests.

§ 142.49 Training center instructor and evaluator privileges and limitations.

(a) A certificate holder may allow an instructor to provide:

(1) Instruction for each curriculum for which that instructor is qualified.

(2) Testing and checking for which that instructor is qualified.

(3) Instruction, testing, and checking intended to satisfy the requirements of any part of this chapter.

(b) A training center whose instructor or evaluator is designated in accordance with the requirements of this subpart to conduct training, testing, or checking in qualified and approved flight training equipment, may allow its instructor or evaluator to give endorsements required by part 61 of this chapter if that instructor or evaluator is authorized by the Administrator to instruct or evaluate in a part 142 curriculum that requires such endorsements.

(c) A training center may not allow an instructor to—

(1) Excluding briefings and debriefings, conduct more than 8 hours of instruction in any 24-consecutive-hour period;

(2) Provide flight training equipment instruction unless that instructor meets the requirements of § 142.53 (a)(1) through (a)(4), and § 142.53(b), as applicable; or

(3) Provide flight instruction in an aircraft unless that instructor—

(i) Meets the requirements of § 142.53(a)(1), (a)(2), and (a)(5);

(ii) Is qualified and authorized in accordance with subpart G of part 61 of this chapter;

(iii) Holds certificates and ratings specified by part 61 of this chapter appropriate to the category, class, and type aircraft in which instructing;

(iv) If instructing or evaluating in an aircraft in flight while occupying a required crewmember seat, holds at least a valid second class medical certificate; and

(v) Meets the recency of experience requirements of part 61 of this chapter.

§ 142.51 [Reserved]

§ 142.53 Training center instructor training and testing requirements.

(a) Except as provided in paragraph (c) of this section, prior to designation and every 12 calendar months beginning the first day of the month following an instructor's initial designation, a certificate holder must ensure that each of its instructors meets the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing in a representative segment of each curriculum for which that instructor is designated to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device must satisfactorily complete an approved course of training in the operation of the flight simulator, and an approved course of ground instruction, applicable to the training courses the instructor is designated to instruct.

(4) The flight simulator training course required by paragraph (a)(3) of this section which must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of simulation; and

(iv) Minimum equipment requirements for each curriculum.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section which must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is designated to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is designated to instruct;

(iii) Emergency operations;

(iv) Emergency situations likely to develop during training; and

(v) Appropriate safety measures.

(7) Each instructor who instructs in qualified and approved flight training equipment must pass a written test and annual proficiency check—

(i) In the flight training equipment in which the instructor will be instructing; and

(ii) On the subject matter and maneuvers which the instructor will be instructing.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(7) of this section, each certificate holder must ensure that each instructor who instructs in a flight simulator that the Administrator has approved for all training and all testing for the airline transport pilot certification test, aircraft type rating test, or both, has met at least one of the following three requirements:

(1) Each instructor must have performed 2 hours in flight, including three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the approved flight simulator in which that instructor is designated to instruct;

(2) Each instructor must have participated in an approved line-

observation program under part 121 or part 135 of this chapter, and that—

(i) Was accomplished in the same airplane type as the airplane represented by the flight simulator in which that instructor is designated to instruct; and

(ii) Included line-oriented flight training of at least 1 hour of flight during which the instructor was the sole manipulator of the controls in a flight simulator that replicated the same type aircraft for which that instructor is designated to instruct; or

(3) Each instructor must have participated in an approved in-flight observation training course that—

(i) Consisted of at least 2 hours of flight time in an airplane of the same type as the airplane replicated by the flight simulator in which the instructor is designated to instruct; and

(ii) Included line-oriented flight training of at least 1 hour of flight during which the instructor was the sole manipulator of the controls in a flight simulator that replicated the same type aircraft for which that instructor is designated to instruct.

(c) An instructor who satisfactorily completes a curriculum required by paragraph (a) or (b) of this section in the calendar month before or after the month in which it is due is considered to have taken it in the month in which it was due for the purpose of computing when the next training is due.

(d) The Administrator may give credit for the requirements of paragraph (a) or (b) of this section to an instructor who has satisfactorily completed an instructor training course for a part 121 or part 135 certificate holder if the Administrator finds such a course equivalent to the requirements of paragraph (a) or (b) of this section.

§ 142.55 Training center evaluator requirements.

(a) Except as provided by paragraph (d) of this section, a training center must ensure that each person authorized as an evaluator—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.47, 142.49, and 142.53 and applicable sections of part 187 of this chapter; and

(3) Prior to designation, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial designation, the certificate holder must ensure that the evaluator satisfactorily completes a curriculum that includes the following:

(i) Evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required tests and checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory tests and subsequent corrective action; and

(4) If evaluating in qualified and approved flight training equipment must satisfactorily pass a written test and annual proficiency check in a flight simulator or aircraft in which the evaluator will be evaluating.

(b) An evaluator who satisfactorily completes a curriculum required by paragraph (a) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it in the month is which it was due for the purpose of computing when the next training is due.

(c) The Administrator may give credit for the requirements of paragraph (a)(3) of this section to an evaluator who has satisfactorily completed an evaluator training course for a part 121 or part 135 certificate holder if the Administrator finds such a course equivalent to the requirements of paragraph (a)(3) of this section.

(d) An evaluator who is qualified under SFAR 58 shall be authorized to conduct evaluations under the Advanced Qualification Program without complying with the requirements of this section.

§ 142.57 Aircraft requirements.

(a) An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction and solo flights meets the following requirements:

(1) Except for flight instruction and solo flights in a curriculum for agricultural aircraft operations, external load operations, and similar aerial work operations, the aircraft must have an FAA standard airworthiness certificate or a foreign equivalent of an FAA standard airworthiness certificate, acceptable to the Administrator.

(2) The aircraft must be maintained and inspected in accordance with—

(i) The requirements of part 91, subpart E, of this chapter; and

(ii) An approved program for maintenance and inspection.

(3) The aircraft must be equipped as provided in the training specifications for the approved course for which it is used.

(b) Except as provided in paragraph (c) of this section, an applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction is at least a two-place aircraft with engine power controls and flight controls that are easily reached and that operate in a conventional manner from both pilot stations.

(c) Airplanes with controls such as nose-wheel steering, switches, fuel selectors, and engine air flow controls that are not easily reached and operated in a conventional manner by both pilots may be used for flight instruction if the certificate holder determines that the flight instruction can be conducted in a safe manner considering the location of controls and their nonconventional operation, or both.

§ 142.59 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking (except AQP) will be or is specifically qualified and approved by the Administrator for—

(1) Each maneuver and procedure for the make, model, and series of aircraft, set of aircraft, or aircraft type simulated, as applicable; and

(2) Each curriculum or training course in which the flight simulator or flight training device is used, if that curriculum or course is used to satisfy any requirement of 14 CFR chapter I.

(b) The approval required by paragraph (a)(2) of this section must include—

(1) The set of aircraft, or type aircraft;

(2) If applicable, the particular variation within type, for which the training, testing, or checking is being conducted; and

(3) The particular maneuver, procedure, or crewmember function to be performed.

(c) Each qualified and approved flight simulator or flight training device used by a training center must—

(1) Be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for qualification;

(2) Be modified to conform with any modification to the aircraft being simulated if the modification results in changes to performance, function, or other characteristics required for qualification;

(3) Be given a functional preflight check each day before being used; and

(4) Have a discrepancy log in which the instructor or evaluator, at the end of each training session, enters each discrepancy.

(d) Unless otherwise authorized by the Administrator, each component on a qualified and approved flight simulator or flight training device used by a training center must be operative if the component is essential to, or involved in, the training, testing, or checking of airmen.

(e) Training centers shall not be restricted to specific—

(1) Route segments during line-oriented flight training scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without—

(1) Holding an air carrier certificate; or

(2) Having a specific relationship to an air carrier certificate holder.

Subpart D—Operating Rules

§ 142.61 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart B of this part.

§ 142.63 Privileges.

A certificate holder may allow flight simulator instructors and evaluators to meet recency of experience requirements through the use of a qualified and approved flight simulator or qualified and approved flight training device if that flight simulator or flight training device is—

(a) Used in a course approved in accordance with subpart B of this part; or

(b) Approved under the Advanced Qualification Program for meeting recency of experience requirements.

§ 142.65 Limitations.

(a) A certificate holder shall—

(1) Ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing or checking; and

(2) Ensure that a repositioning feature is used during line operational simulation for evaluation and line-oriented flight training only to advance along a flight route to the point where the descent and approach phase of the flight begins.

(b) When flight testing, flight checking, or line operational simulation is being conducted, the certificate holder must ensure that one of the following occupies each crewmember position:

(1) A crewmember qualified in the aircraft category, class, and type, if a type rating is required, provided that no flight instructor who is giving instruction may occupy a crewmember position.

(2) A student, provided that no student may be used in a crewmember position with any other student not in the same specific course.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.37; and

(2) Has passed the final tests required by § 142.37.

(d) The holder of a training center certificate may not graduate a student from a course unless the student has satisfactorily completed the curriculum requirements of that course.

Subpart E—Recordkeeping

§ 142.71 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators designated to instruct a course, approved in accordance with subpart B of this part.

§ 142.73 Recordkeeping requirements.

(a) A certificate holder must maintain a record for each trainee that contains—

(1) The name of the trainee;

(2) A copy of the trainee's pilot certificate, if any, and medical certificate;

(3) The name of the course and the make and model of flight training equipment used;

(4) The trainee's prerequisite experience and course time completed;

(5) The trainee's performance on each lesson and the name of the instructor providing instruction;

(6) The date and result of each end-of-course practical test and the name of the evaluator conducting the test; and

(7) The number of hours of additional training that was accomplished after any unsatisfactory practical test.

(b) A certificate holder shall maintain a record for each instructor or evaluator designated to instruct a course approved in accordance with subpart B of this part that indicates that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.45, 142.47, 142.49, and 142.53, as applicable.

(c) The certificate holder shall—

(1) Maintain the records required by paragraphs (a) of this section for at least 1 year following the completion of training, testing or checking;

(2) Maintain the qualification records required by paragraph (b) of this section while the instructor or evaluator is in the employ of the certificate holder and for 1 year thereafter; and

(3) Maintain the recurrent demonstration of proficiency records required by paragraph (b) of this section for at least 1 year.

(d) The certificate holder must provide the records required by this section to the Administrator, upon request and at a reasonable time, and shall keep the records required by—

(1) Paragraph (a) of this section at the training center, or satellite training center where the training, testing, or checking, if appropriate, occurred; and

(2) Paragraph (b) of this section at the training center or satellite training center where the instructor or evaluator is primarily employed.

(e) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

Subpart F—Other Approved Courses

§ 142.81 Conduct of other approved courses.

(a) An applicant for, or holder of, a training center certificate may apply for approval to conduct a course for which a curriculum is not prescribed by this part.

(b) The course for which application is made under paragraph (a) of this section may be for flight crewmembers other than pilots, airmen other than flight crewmembers, material handlers, ground servicing personnel, and security personnel, and others approved by the Administrator.

(c) An applicant for course approval under this subpart must comply with the applicable requirements of subpart A through subpart F of this part.

(d) The Administrator approves the course for which the application is made if the training center or training center applicant shows that the course contains a curriculum that will achieve a level of competency equal to, or greater than, that required by the appropriate part of this chapter.

Issued in Washington, DC, on May 23, 1996.

David R. Hinson,

Administrator.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Part 660, et al.
Fisheries off West Coast States and in the Western Pacific; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 660, 661, 663, 680, 681, 683, and 685

[Docket No. 960614176–6176–01; I.D. 050796A]

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Fisheries off West Coast States and in the Western Pacific

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

ACTION: Final rule.

SUMMARY: NMFS is consolidating six CFR parts into one new CFR part. The new part contains regulations implementing management measures for fisheries operating in the exclusive economic zone (EEZ) off West Coast and Western Pacific states. The domestic fisheries for groundfish and ocean salmon off the West Coast and for precious corals, crustaceans, bottomfish and seamount groundfish, and Pelagics of the Western Pacific will be managed under this new part. This final rule does not make substantive changes to the existing regulations; rather, it reorganizes management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes editorial changes for readability, clarity, and to achieve uniformity in regulatory language. This final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: These regulations are effective on July 1, 1996, with the exception of 50 CFR 660.404 and 660.408, which will become effective when OMB has approved collection-of-information requirements for those sections and that approval has been published in the **Federal Register**, and 50 CFR 600.53 which will become effective August 4, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Robinson, NMFS, 206–526–6140; Rod McInnis, NMFS, 310–980–4030; or Alvin Katekaru, NMFS, 808–973–2985.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing the Fishery Management Plans (FMPs) for fisheries off West Coast and Western Pacific states.

Domestic groundfish fisheries in the EEZ off the West Coast are managed by NMFS under the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery (Pacific Coast Groundfish Fishery Management Plan), which is implemented by regulations at 50 CFR part 663. The ocean salmon fisheries are managed under the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which is implemented by regulations at 50 CFR part 661. The Western Pacific precious corals fisheries are managed under regulations at 50 CFR part 680, which implement the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region. The lobster fishery of the Northwestern Hawaiian Islands (NWHI) is managed under the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region, which is implemented by regulations at 50 CFR part 681. The NWHI fisheries for bottomfish and seamount groundfish are managed by NMFS through regulations at 50 CFR part 683, which implement the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The fisheries for Pacific pelagic species are managed under regulations at 50 CFR part 685, which implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. General regulations that also pertain to these fisheries appear in 50 CFR part 600. The Groundfish and Salmon FMPs were prepared by the Pacific Fishery Management Council, and the Precious Corals, Crustaceans, Bottomfish and Seamount Groundfish, and Pelagics FMPs were prepared by the Western Pacific Fishery Management Council, under the authority of the Magnuson Fishery Conservation and Management Act. Consolidation of Regulations Related to the Domestic Fisheries Operating in the EEZ Off West Coast and Western Pacific States Into One CFR Part (50 CFR part 660)

Currently, regulations implementing the six FMPs described above are contained in six separate parts of title 50 of the CFR, in addition to general provisions for foreign fisheries contained in part 600. NMFS, through this rulemaking, removes the six parts (50 CFR parts 661, 663, 680, 681, 683, and 685) and consolidates the regulations contained therein into one new part (50 CFR part 660). This consolidated regulation provides the public with a single reference source for the Federal fisheries regulations specific to the fisheries operating in the EEZ off the West Coast (California, Oregon, and Washington) or in the Western Pacific (Hawaii, American Samoa, Guam, the Northern Mariana Islands, and U.S. island possessions in the Pacific). The restructuring of the six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than the six separate parts. Many provisions in part 600 also apply to the fisheries operating in the EEZ off West Coast and Western Pacific States.

Reorganization of Management Measures Within the Consolidated Regulations and Elimination of Obsolete or Duplicative Provisions

In new part 660, NMFS has reorganized the consolidated management measures in a more logical and cohesive order. Because portions of the existing regulations contain identical or nearly identical provisions, similar measures have been combined and restructured. For example, certain definitions, prohibitions, and requirements that were common to the current regulations for all the fisheries, but located in different parts, were placed in a general subpart so they would only appear once. For provisions common to all Western Pacific fisheries, a separate subpart is established. Paragraph headings have been added where appropriate for ease in identifying measures, and regulatory language has been revised to improve clarity and consistency.

As a result of the consolidation effort, NMFS also identified duplicative and obsolete provisions and removed those measures from the regulations. For example, obsolete provisions dealing with initial issuance of permits under limited entry programs for Western Pacific bottomfish, crustacean, and longline fisheries and for West Coast

groundfish fisheries were removed. In addition, changes to part 661 (salmon) include correcting the scientific name for steelhead (rainbow trout) to *Oncorhynchus mykiss*, updating escapement goals for consistency with revised management procedures of the Pacific Fishery Management Council, and removing the appendix by incorporation of relevant portions into the numbered sections and deletion of any repetitive or unnecessary information.

Changes to part 663 (Pacific Coast groundfish) include removing the appendix of standards and procedures and, instead, referencing appropriate sections in the Pacific Coast Groundfish Fishery Management Plan, removing obsolete requirements for applications for limited entry permits, consolidating definitions in one section that previously were scattered throughout part 663, removing those definitions and regulations that either appear elsewhere in part 660 or are no longer relevant after the appendix was removed, and making technical and editorial clarifications.

A limited entry program was implemented in the Pacific Coast groundfish fishery in 1994. The window of time for initial permit issuance is over, so the standards and procedures for initial permit issuance have been removed from the regulations because they are no longer necessary. There are still some appeals from permits denials pending before the agency and Federal courts. The regulatory provisions that were in effect at the time of permit denial will still be used in these proceedings, even though they are being removed from codification. There are two extremely limited circumstances in which fishermen may obtain new initial permits, but it is highly unlikely that anyone will qualify for a permit under these provisions. Therefore, the details governing these permits are removed from codification. The standards and procedures covering issuance of these permits, and the privileges accompanying these permits, are described in the FMP, and the relevant sections are cited in these regulations. The provisions governing administration and transfer of existing permits remain in the codified regulations.

No substantive changes were made to the regulations by this reorganization or by the removal of duplicative and obsolete provisions.

Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

This rule also makes a technical correction to the regulations establishing a longline fishing prohibited area around Guam. The final rule technical amendment published September 13, 1994 (59 FR 46933) contained an error, and the correct coordinates have been specified in § 660.26(d).

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

Because this rule makes only nonsubstantive changes to existing regulations originally issued after prior notice and an opportunity for public comment, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 533(b)(B), for good cause finds that providing such procedures for this rulemaking is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

OMB approval for the West Coast Salmon Fisheries PRA collection-of-information requirements has expired. NMFS is in the process of obtaining OMB approval for these requirements. The collection of information requirements of 50 CFR 660.404 and 660.408 are suspended until such time as OMB approves the collection and notification of the approval is published in the **Federal Register**.

The following collection-of-information requirements have already been approved by OMB for U.S. fishing activities:

a. *Approved under 0648–0204*—(1) Southwest Region Federal Fishing Permits, estimated at 0.55 hours per permit action; (2) experimental fishing permits, estimated at 2 hours per application (§§ 660.13, 660.17, and 660.21(k)).

b. *Approved under 0648–0214*—Southwest Logbook Family of Forms: (1) Catch-and-effort logbooks, estimated at 5 minutes per response; (2) pre-trip notifications, estimated at 5 minutes per notice; (3) post-landing notices, estimated at 5 minutes per response; (4) observer placement meetings, estimated at 1 hour per response; (5) protected species interaction reports, estimated at 3 minutes per response; (6) pre-landing notices, estimated at 5 minutes per response; (7) experimental fishing reports, estimated at 4 hours per report; (8) report on gear left at sea, estimated at 5 minutes per response; (9) sales and transshipment reports, estimated at 5 minutes per response; (10) precious corals sales report, estimated at 15 minutes per response; (11) pelagics transshipment logbooks, estimated at 5 minutes per response; (12) claims for reimbursement for lost fishing time, estimated at 4 hours per response; and (13) request for pelagics area closure exemption, estimated at 1 hour per response (§§ 660.14, 660.23, 660.24, 660.28, 660.43, and 660.48).

c. *Approved under 0648–0203*—Northwest Federal Fisheries Permits: (1) Experimental fishing permits, estimated at 32 minutes per response; (2) limited entry permits, estimated at 20 minutes per response; and (3) at-sea processing permits, estimated at 20 minutes per response (§ 660.333).

d. *Approved under 0648–0243*—Survey of intent and capacity to harvest and process fish and shellfish, estimated at 5 minutes per response (§ 660.323).

e. *Approved under 0648–0271*—Northwest Region Logbook Family of Forms: (1) Weekly production report, estimated at 30 minutes per response; (2) transfer logs, estimated at 15 minutes per response; (3) cumulative production logs, estimated at 13–26 minutes per response, depending on the type of fishing operation; and (4) start/stop reports, estimated at 5 minutes per response (§ 660.305).

f. *Approved under 0648–0305*—Gear identification requirements, estimated at 30 minutes per response (§§ 660.24, 660.48, and 660.322).

g. *Approved under 0648–0306*—Vessel identification requirements, estimated at 35 minutes per response (§§ 660.16 and 660.305).

h. *Approved under 0648–0307*—Arrangements for placing and adjusting vessel monitoring system units,

estimated at 1 hour per response (§ 660.25).

Because this rule makes only nonsubstantive changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 680

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 681

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table, in the entries for 50 CFR in the left column, in numerical order, the following entries and corresponding OMB Numbers are removed: "680.4", "680.5", "680.6", "680.10", "681.4", "681.5", "681.6", "681.10", "681.24", "681.25", "681.30", "683.4", "683.9", "683.21", "683.25", "683.27", "683.29", "685.4", "685.9", "685.10", "685.11", "685.12", "685.13", "685.14", "685.15", "685.16", and "685.24". The following new entries are added to the table:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
§ 660.13	–0204
§ 660.14	–0214
§ 660.16	–0306
§ 660.17	–0204
§ 660.21(k)	–0204
§ 660.23	–0214
§ 660.24	–0305
§ 660.25	–0307
§ 660.27	–0214
§ 660.28	–0214
§ 660.43	–0214
§ 660.48	[1] –0214
§ 660.303	–0271
§ 660.305	–0306
§ 660.322	–0305
§ 660.323	–0243
§ 660.333	–0203

[1] And –0305.

* * * * *

50 CFR CHAPTER VI

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

3. Part 660 is added to read as follows:

PART 660—FISHERIES OFF WEST COAST AND WESTERN PACIFIC STATES

Subpart A—General

Sec.

660.1 Purpose and scope.
660.2 Relation to other laws.
660.3 Reporting and recordkeeping.

Subpart B—Western Pacific Fisheries—General

660.11 Purpose and scope.
660.12 Definitions.
660.13 Permits and fees.
660.14 Reporting and recordkeeping.
660.15 Prohibitions.
660.16 Vessel identification.
660.17 Experimental fishing.

Subpart C—Western Pacific Pelagic Fisheries

660.21 Permits.
660.22 Prohibitions.
660.23 Notifications.
660.24 Gear identification.
660.25 Vessel monitoring system.
660.26 Longline fishing prohibited area management.
660.27 Exemptions for longline fishing prohibited areas; procedures.
660.28 Conditions for at-sea observer coverage.
660.29 Port privileges and transiting for unpermitted U.S. longline vessels.
660.30 Prohibition of drift gillnetting.
660.31 Framework adjustments to management measures.

Subpart D—Western Pacific Crustacean Fisheries

660.41 Permits.
660.42 Prohibitions.
660.43 Notifications.
660.44 Lobster size and condition restrictions.
660.45 Closed seasons.
660.46 Closed areas.
660.47 Gear identification.
660.48 Gear restrictions.
660.49 At-sea observer coverage.
660.50 Harvest limitation program.
660.51 Monk seal protective measures.
660.52 Monk seal emergency protective measures.
660.53 Framework procedures.
660.54 Five-year review.

Subpart E—Bottomfish And Seamount Groundfish Fisheries

660.61 Permits.
660.62 Prohibitions.
660.63 Notification.
660.64 Gear restrictions.
660.65 At-sea observer coverage.
660.66 Protected species conservation.
660.67 Framework for regulatory adjustments.
660.68 Fishing moratorium on Hancock Seamount.
660.69 Management Subareas.

Subpart F—Precious Corals Fisheries

660.81 Permits.
660.82 Prohibitions.
660.83 Seasons.
660.84 Quotas.
660.85 Closures.
660.86 Size restrictions.
660.87 Area restrictions.
660.88 Gear restrictions.

Subpart G—West Coast Groundfish

660.301 Purpose and scope.
660.302 Definitions.
660.303 Reporting and recordkeeping.
660.304 Management areas.
660.305 Vessel identification.
660.306 Prohibitions.
660.321 Specifications and management measures.
660.322 Gear restrictions.
660.323 Catch restrictions.
660.324 Pacific Coast treaty Indian fisheries.
660.331 Limited entry and open access fisheries—general.

660.332 Allocations.
660.333 Limited entry fishery.
660.334 Limited entry permits—"A" endorsement.
660.335 Limited entry permits—"Provisional A" endorsement.
660.336 Limited entry permits—"B" endorsement.
660.337 Limited entry permits—"designated species B" endorsement.
660.338 Limited entry permits—new permits.
660.339 Limited entry permit fees.
660.340 Limited entry permit appeals.
660.341 Limited entry permit sanctions.

Subpart H—West Coast Salmon Fisheries

660.401 Purpose and scope.
660.402 Definitions.
660.403 Relation to other laws.
660.404 Recordkeeping and reporting.
660.405 Prohibitions.
660.406 Exempted fishing.
660.407 Treaty Indian fishing.
660.408 Annual actions.
660.409 Inseason actions.
660.410 Escapement goals.
660.411 Notification and publication procedures.
Tables—Part 660
Table 1 to Part 660—Quotas for Precious Corals Permit Areas
Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits
Figures—Part 660
Figure 1 to Part 660—Carapace Length of Lobsters
Figure 2 to Part 660—Length of a Longline Vessel
Figure 3 to Part 660—Dressed, Head-off Length of Salmon

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

Subpart A—General

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific and West Coast fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific and West Coast States.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in part 600 of this chapter.

§ 660.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 660.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

Subpart B—Western Pacific Fisheries—General

§ 660.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, and F of this part.

§ 660.12 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in subparts B through F of this part have the following meanings:

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

Bottomfish management area means the areas designated in § 660.69.

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	Lehi (H); palu-gustusilvia (S)	*Aphareus rutilans.*
Gray jobfish	Uku (H); asoama (S)	*Aprion virescens.*
Squirrelfish snapper	Ehu (H); palu-malau (S)	*Etelis carbunculus.*
Longtail snapper	Onaga, ula'T1ula (H); palu-loa (S)	*Etelis coruscans.*
Blue stripe snapper	Ta'ape (H); savane (S); funai (G)	*Lutjanus kasmira.*
Yellowtail snapper	Palu-i' lusama (S); yellowtail kalekale	*Pristipomoides auricilla.*
Pink snapper	Opakapaka (H); palu-'Tlena'lena (S); gadao (G).	*Pristipomoides.*
Yelloweye snapper	Palusina (S); yelloweye opakapaka	*Pristipomoides flavipinnis.*
Snapper	Kalekale (H)	*Pristipomoides sieboldii.*
Snapper	Gindai (H,G); palu-sega (S)	*Pristipomoides zonatus.*
Jacks:		
Giant trevally	White ulua (H); tarakito (G); sapo-anae (S)	*Caranx ignoblis.*
Black jack	Black ulua (H); tarakito (G); tafauli (S)	*Caranx lugubris.*
Thick lipped trevally	Pig ulua (H); butaguchi (H)	*Pseudocaranx dentex.*
Amberjack	Kahala (H)	*Seriola dumerili.*
Groupers:		
Blacktip grouper	Fausi (S); gadau (G)	*Epinephelus fasciatus.*
Sea bass	Hapu' 1upu'u (H)	*Epinephelus quernus.*
Lunartail grouper	Papa (S)	*Variola louti.*
Emperor fishes:		
Ambon emperor	Filoa-gutumumu (S)	*Lethrinus amboinensis.*
Redgill emperor	Filoa-pa'lo'omumu (S); mafuti (G)	*Lethrinus rubrioperculatus.*

NOTES: G—Guam; H—Hawaii; S—American Samoa.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 of this part).

Commercial fishing, as used in subpart D of this part, means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

Council means the Western Pacific Fishery Management Council.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

Crustaceans management area means the combined portions of the EEZ encompassed by Crustaceans Permit Areas 1, 2, and 3.

Crustaceans management unit species means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

Crustaceans Permit Area 1 (Permit Area 1) means the EEZ off the Northwestern Hawaiian Islands.

Crustaceans Permit Area 2 (Permit Area 2) means the EEZ off the main Hawaiian Islands.

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ of the Territory of Guam and the EEZ of the Territory of American Samoa.

Crustaceans receiving vessel means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under subpart D of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fish dealer means any person who:

(1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Southwest Regional Office, NMFS, or a designee. See Table 1 to § 600.502 for the address of the Regional Office.

Fishing gear, as used in subpart D of this part, includes:

(1) *Bottom trawl*, which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.

(2) *Gillnet*, (see § 600.10).

(3) *Hook-and-line*, which means one or more hooks attached to one or more lines.

(4) *Set net*, which means a stationary, buoyed, and anchored gill net.

(5) *Trawl*, (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Harvest guideline means a specified numerical harvest objective.

Hawaii longline limited access permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 660.51 and 660.52, and who has specifically requested to be considered an "interested party."

Land or *landing* means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Length overall (LOA) or *length* of a vessel, as used in § 660.21(i), means the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 of this part). "Stem" is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. "Stern" is the aftermost part of the vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Lobster closed area means an area of the EEZ that is closed to fishing for lobster.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 660.26.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Longline general permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species in the fishery management area, excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

Main Hawaiian Islands means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

Non-precious coral means any species of coral other than those listed under the definition for precious coral in this section.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Islands Archipelago lying to the west of 161° W. long.

Offloading means removing management unit species from a vessel.

Owner, as used in subparts C and D of this part, means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or territory or the USCG for an undocumented vessel. As used in subpart E and F of this part, owner has the meaning in § 600.10 of this chapter.

Pacific Area Office means the Pacific Area Office, Southwest Region, NMFS, located in Honolulu, HI. The address and phone number may be obtained from the Regional Director whose address is in Table 1 to § 600.502.

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish).	*Coryphaena* spp.
Marlin and spearfish	*Makaira* spp. *Tetrapturus* spp.
Oceanic sharks	Family Alopiidae. Family Carcharhinidae. Family Lamnidae. Family Sphyrnidae.
Sailfish	*Istiophorus platypterus.*
Swordfish	*Xiphias gladius.*
Tuna and related species.	*Allothunnus* spp., *Auxis* spp. *Euthynnus* spp., *Gymnosarda* spp. *Katsuwonus* spp., *Scomber* spp. *Thunnus* spp.
Wahoo	*Acanthocybium solandri.*

Pelagics FMP means the Fishery Management Plan for Pelagic Species Fisheries of the Western Pacific Region.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral).	*Corallium secundum.*
Pink coral (also known as red coral).	*Corallium regale.*
Pink coral (also known as red coral).	*Corallium laauense.*
Gold coral	*Gerardia* spp.
Gold coral	*Callogorgia gilberti.*
Gold coral	*Narella* spp.
Gold coral	*Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa.*
Bamboo coral	*Acanella* spp.
Black coral	*Antipathes dichotoma.*
Black coral	*Antipathes grandis.*
Black coral	*Antipathes ulex.*

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds.* Makapuu (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°35.5′ W. long.

(2) *Conditional beds.* (i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) *Refugia.* Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 162°35.0′ W. long.

(4) *Exploratory areas.* (1) Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

(ii) Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

(iii) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(iv) Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Protected species means an animal protected under the MMPA, listed under the ESA, or subject to the Migratory Bird Treaty Act, as amended.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 660.66, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long.; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long.; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Island 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

Protected species zone means an area, designated under § 660.26, measured from the center geographical positions of certain islands and reefs in the NWHI, as follows: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Islands 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

Qualifying landing means a landing that meets a standard required for permit eligibility under § 660.61.

(1) *Permit renewal.* A qualifying landing for permit renewal under § 660.61(e) is a landing that contained 2,500 lb (1,134 kg) of bottomfish from the NWHI or a landing of at least 2,500 lb (1,134 kg) of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(2) *New access eligibility points.* A qualifying landing for eligibility points under § 660.61(g) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 lb (1,134 kg) of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 lb (1,134 kg) of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

Receiving vessel permit means a permit required by § 660.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Director means the Director, Southwest Region, NMFS (see Table 1 of § 600.502 for address).

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	Pentaceros richardsoni.
Alfonsin	Beryx splendens.
Raftfish	Hyperoglyphe japonica.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters.

U.S. harvested corals means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel monitoring system unit (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions from longline fishing vessels.

§ 660.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C through F of this part.

(b) *Validity.* Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application.* (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments, certifications, signatures, and fees required.

(2) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Change in application information.* A minimum of 10 days should be given for the Pacific Area Office to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under § 660.21, § 660.41, § 660.61, or § 660.81, as appropriate.

(f) *Fees.* (1) No fee is required for a permit issued under subparts D, E, and F of this part.

(2) A fee is charged for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a Hawaii longline limited access permit.

(g) *Expiration.* Permits issued under this subpart will remain valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer as allowed under § 660.21(h), § 660.41(e), or § 660.61(c) and (d) must be submitted to the Pacific Area Office as described in paragraph (c) of this section.

(j) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permit and administrative actions are specified in the relevant subparts of this part.

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours of the day of transshipment. The original logbook form for each day of transshipment activity must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the receiving vessel operator.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 660.41 must submit to the Regional Director, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Director. The form must be signed and dated by the fishing vessel operator.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of § 660.41 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(f) *Availability of records for inspection.* (1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustaceans management unit species.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of

NMFS designated by the Regional Director, to access, inspect, and copy all records described in paragraph (a) of this section relating to crustacean management unit species taken by vessels that have permits issued under this subpart or that are otherwise subject to subpart D of this part.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(g) *State reporting.* Any person who has a permit under §§ 660.21 or 660.61 and who is required by state laws and regulations to maintain and submit records of landings and sales for vessels regulated by subparts C and E of this part must maintain and submit those records in the exact manner required by state laws and regulations.

§ 660.15 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under § 660.13 or § 660.17, unless the vessel was at sea when the permit was issued under § 660.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under § 660.13 or an EFP under § 660.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in § 660.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 660.14 and 660.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Director for inspection or copying, any records that must be made available in accordance with § 660.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 660.16, 660.24, and 660.47.

(g) Violate a term or condition of an EFP issued under § 660.17.

(h) Fail to report any take of or interaction with protected species as required by § 660.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§ 660.17, 660.28, 660.49, or 660.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Director under § 660.28, § 660.49, or § 660.65, or under any provision in an EFP issued under § 660.17.

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, and 660.63.

§ 660.16 Vessel identification.

(a) Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this subpart and subparts C, D, E, and F of this part, in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except vessels subject to Subpart F and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 660.17 Experimental fishing.

(a) *General.* The Regional Director may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this subpart and subparts C, D, E, and F of this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Director in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean management unit species may be conducted unless an NMFS scientific observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Director may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Director will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Director will consult with the Council and the Director of the affected

state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Director may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) *Alteration.* Any EFP that has been altered, erased, or mutilated is invalid.

(h) *Transfer.* EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) *Inspection.* Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) *Protected species.* Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart C—Western Pacific Pelagic Fisheries

§ 660.21 Permits.

(a) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit or a longline general permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean, Pacific pelagic management unit species that were harvested with longline gear.

(b) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Hawaii; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around Hawaii, Pacific pelagic management unit species that were harvested with longline gear.

(c) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species that were harvested with longline gear.

(d) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(e) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(f) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(g) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(h) A limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer will be submitted to the Pacific Area Office as described in § 660.13(c).

(i) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(j) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(k) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Director the granting, denial, conditioning, suspension, or

transfer of a permit or requested permit under this section. To be considered by the Regional Director, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set out in this part and in the Fishery Management Plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section; and such other considerations as deemed appropriate. The Regional Director will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Director determines that one is appropriate, the Regional Director may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Director.

(3) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Director's action shall constitute final Agency action for the purposes of the APA.

(4) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

§ 660.22 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

(b) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(c) Use a longline vessel without a valid longline general permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(d) Use a longline fishing vessel without a valid Hawaii longline limited access permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(e) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species harvested with longline gear.

(f) Transfer a permit in violation of § 660.21(h).

(g) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in the NWHI.

(h) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone, as required under § 660.23(b).

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.17.

(j) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(k) Fail to comply with a term or condition governing the observer program established in § 660.28.

(l) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(m) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(n) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(o) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(p) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(q) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel or a longline general permit registered for use with that vessel.

(r) Fail to carry a VMS unit as required under § 660.25.

(s) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(t) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(u) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(v) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(w) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(x) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(y) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Southwest Enforcement Office (see part 600 for address of Regional Director) immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

§ 660.24 Gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 660.25 Vessel monitoring system.

(a) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(b) *Notification.* After a Hawaii longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit in the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited access permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit and the master of the vessel operating under the permit must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry the VMS unit on board whenever the vessel is at sea.

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

§ 660.26 Longline fishing prohibited area management.

(a) *Prohibited areas.* Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) *Longline protected species zone.* The protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 660.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	DW. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°35′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) *Guam.* The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	144°33′30″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 660.27 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing

prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel.

(2) Before 1970, was the owner or operator of a vessel when that vessel landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area.

(3) Was the owner or operator of a vessel that landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive.

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught Pacific pelagic management unit species in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Director in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 660.28 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The "Notice Prior to Fishing Trip" requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Director is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Director and the permit holder or designated agent agree to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 660.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Director's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Director imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Director.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Director.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is

transmitted to the Fisheries Observer Branch, Southwest Region, NMFS (see address for Southwest Regional Director) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Southwest Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart B of this part may enter waters of the fishery management area with Pacific pelagic management unit species on board, but may not land or transship any management unit species on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 660.30 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 660.17.

§ 660.31 Framework adjustments to management measures.

(a) *Introduction.* Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

Subpart D—Western Pacific Crustacean Fisheries

§ 660.41 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel. Only one permit will be assigned to any vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 or Permit Area 3, must have a permit issued for such a vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A limited access permit is valid for fishing only in Permit Area 1.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 660.13.

(c) *Application.* An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Number of permits.* A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed

on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 660.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.*

(1) The Regional Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register**, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the **Federal Register** notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50-percent share in the vessel that the permit would cover.

§ 660.42 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.16, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 660.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 660.48;

(iii) From closed areas for lobsters, as specified in § 660.46;

(iv) During a closed season, as specified in § 660.45; or

(v) After the closure date, as specified in § 660.50, and until the fishery opens again in the following calendar year.

(2) Fail to report before landing or offloading as specified in § 660.43.

(3) Fail to comply with any protective measures implemented under § 660.51 or § 660.52.

(4) Possess on a fishing vessel in the crustaceans fishery management area any lobster trap when fishing for lobster is prohibited as specified in §§ 660.45, 660.50, 660.51, or 660.52.

(5) Leave a trap unattended in the Management Area except as provided in § 660.48.

(6) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 660.48.

(7) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 660.50, until the fishery opens again the following year.

(8) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 660.14(f)(2).

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 660.48; or

(ii) During a closed season, as specified in § 660.45(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 660.44.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 660.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 660.44.

§ 660.43 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Director will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season

§ 660.44 Lobster size and condition restrictions—Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 3 of this subpart).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 660.45 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of June, July, and August.

§ 660.46 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 660.47 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 660.48 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the NMFS Law Enforcement Office of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(b) *Permit Area 2.* Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 660.49 At-sea observer coverage.

All fishing vessels subject to this subpart and subpart B of this part must carry an observer when requested to do so by the Regional Director.

§ 660.50 Harvest limitation program.

(a) *General.* A harvest guideline for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by March 31 each year, and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 will be prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the **Federal Register**. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§ 660.51 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. The Regional Director will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Director will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October-February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Director will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Director will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will prepare a document that describes the incident, the protective measures

proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) Implementation of protective measures. (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director concludes that protective measures are necessary and appropriate, the Regional Director will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Director's recommendation, NMFS will publish an action in the **Federal Register** that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Director or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the **Federal Register.**

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Crustaceans FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the **Federal Register.**

§ 660.52 Monk seal emergency protective measures.

(a) *Determination of emergency.* If, at any time during the process described in § 660.51, the Regional Director determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Director will—

(1) Notify the interested parties of this determination and request their immediate advice and comments.

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(b) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(1) The Regional Director will determine the appropriate emergency protective measures.

(2) NMFS will publish the emergency protective measures in the **Federal Register.**

(3) The Regional Director will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 660.51.

§ 660.53 Framework procedures.

(a) *Introduction.* New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

§ 660.54 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

Subpart E—Bottomfish and Seamount Groundfish Fisheries

§ 660.61 Permits.

(a) *Applicability.* (1) The owner of any vessel being used to fish for bottomfish or seamount groundfish species in the management area must have a permit issued under this section for that vessel.

(2) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Application.* (1) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(2) Before the Regional Director issues a Mau Zone or Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(3) Each applicant for a Ho'omalu zone permit will submit a supplementary information sheet to be provided by the Pacific Area Office. Each application for a Ho'omalu zone permit will be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalu Zone permits to new vessel owners.* (1) A Ho'omalu zone permit shall not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(d) *Transfer of permits to replacement vessels.* (1) An owner of a permitted vessel may, without limitation, transfer his or her permit to another vessel owned by him or her, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(2) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(3) The Regional Director shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings as defined in § 660.12 during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Director may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) *Supplementary requirements for new limited access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made and published annually in association with the annual report required under § 660.67.

(g) *Eligibility for new limited access permits.* When the Regional Director has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points shall be assigned for each year in which the applicant was owner or captain of a vessel that made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under paragraph (g)(1)(i) or (ii) of this section for any 1 year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) *Restrictions.* An applicant must own at least a 25-percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(4) *Notification.* The Regional Director shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and the amendment to the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the APA.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefore.

§ 660.62 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 660.64.

(b) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under §§ 660.13 and 660.61.

(c) Fish for bottomfish in the Mau Zone without a permit issued under §§ 660.13 and 660.61.

(d) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 660.61.

(e) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 660.63.

(f) Fish within any protected species study zone in the NWHI without notifying the Regional Director of the intent to fish in these zones, as required under § 660.63.

§ 660.63 Notification.

(a) The owner or operator of a fishing vessel subject to this subpart must inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 660.12. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 660.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 660.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 660.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Director.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

§ 660.66 Protected species conservation.

The Regional Director may change the size of the protected species study zones defined in § 660.12 of this subpart:

(a) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 660.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance data.

(2) Summary of recent research and survey results.

(3) Habitat conditions and recent alterations.

(4) Enforcement activities and problems.

(5) Administrative actions (e.g., data collection and reporting, permits).

(6) State and territorial management actions.

(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(i) Mean size of the catch of any species in any area is a pre-reproductive size.

(ii) Ratio of fishing mortality to natural mortality for any species.

(iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(v) Substantial decline in ex-vessel revenue relative to baseline levels.

(vi) Significant shift in the relative proportions of gear in any one area.

(vii) Significant change in the frozen/fresh components of the bottomfish catch.

(viii) Entry/exit of fishermen in any area.

(ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.

(x) Significant decline or increase in total bottomfish landings in any area.

(xi) Change in species composition of the bottomfish catch in any area.

(xii) Research results.

(xiii) Habitat degradation or environmental problems.

(xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.

(8) Recommendations for Council action.

(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Director after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Director will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Director rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Director and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Director on administrative decisions.

(iv) The Council's recommendation to the Regional Director must be approved by a two-thirds majority of the voting members.

(3) If prior participation in the fishery is used as a factor in any access limitation system recommended by the Council, August 7, 1985, is the date selected by the Council as the date to be used for the NWHI and May 30, 1986, for American Samoa and Guam.

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

§ 660.69 Management subareas.

(a) The bottomfish fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20′ W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20′ W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, and the Territory of Guam (the "3 mile-limit").

(c) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is

200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

Subpart F—Precious Corals Fisheries

§ 660.81 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining precious coral in any precious coral permit area must have a permit issued under § 660.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 660.12.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit for the precious corals fishery issued under § 660.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious corals fishery are contained in § 660.13.

§ 660.82 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 660.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 660.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of precious coral in any precious coral permit area:

(1) By means of gear or methods prohibited by § 660.88.

(2) In refugia specified in § 660.12.

(3) In a bed for which the quota specified in § 660.84 has been attained.

(4) In violation of any permit issued under § 660.13 or § 660.17.

(c) Take and retain, possess, or land any pink coral from the Makapuu Bed (Permit Area E–B–1), Keahole Point Bed (Permit Area C–B–1), or Kaena Point Bed (Permit Area C–B–2) that is less than the minimum height specified in § 660.86, unless:

(1) A valid EFP was issued under § 660.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 660.83 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a 2-year fishing period that begins July 1 and ends June 30, 2 years later.

§ 660.84 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in Table 1 of this part. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) NMFS will publish in the Federal Register a notification of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 660.85 Closures.

(a) If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapuu Bed, NMFS will issue a field order closing the bed involved by publication of an action in the Federal Register, and through appropriate news media. Any such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 660.86 Size restrictions.

Pink coral harvested from the Makapuu bed (E–B–1), the Keahole Point Bed (C–B–1), and the Kaena Point Bed (C–B–2), must have attained a minimum height of 10 inches (25.4 cm). There are no size limits for precious coral from other beds or other species.

§ 660.87 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 660.88 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and exploratory areas other than the EEZ off the main Hawaiian Islands.

Subpart G—West Coast Groundfish Fisheries

660.301 Purpose and scope.

This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. These regulations govern groundfish fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

§ 660.302 Definitions.

At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes or for recreational fisheries. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

Council means the Pacific Fishery Management Council, including its Groundfish Management Team, Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other committee established by the Council.

Exempted gear means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber south of Pt. Arena, under the authority of a State of California limited entry permit for the sea cucumber fishery.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Northwest Regional Office, NMFS, or a designee.

Fishing gear includes the following types of gear and equipment used in the groundfish fishery:

(1) *Bobbin trawl.* The same as a roller trawl, a type of bottom trawl.

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a pelagic trawl in § 660.322 is a bottom trawl.

(3) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(4) *Codend.* (See § 600.10).

(5) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(6) *Double-bar mesh.* Two lengths of twine tied into a single knot.

(7) *Double-walled codend.* A codend constructed of two walls of webbing.

(8) *Fixed gear (anchored nontrawl gear).* Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(9) *Gillnet.* (See § 600.10).

(10) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(11) *Longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(12) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(13) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(14) *Pelagic (midwater or off-bottom) trawl.* A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

(15) *Pot.* A trap.

(16) *Roller trawl (bobbin trawl).* A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(17) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(18) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(19) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(20) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(21) *Trap (or pot).* A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(22) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the PCGFMP, specifically:

Sharks:
- leopard shark, *Triakis semifasciata*
- soupfin shark, *Galeorhinus zyopterus*
- spiny dogfish, *Squalus acanthias*

Skates:
- big skate, *Raja binoculata*
- California skate, *R. inornata*
- longnose skate, *R. rhina*

Ratfish:
- ratfish, *Hydrolagus colliei*

Morids:
- finescale codling, *Antimora microlepis*

Grenadiers:
- Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:
- cabezon, *Scorpaenichthys marmoratus*
- jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*
- kelp greenling, *Hexagrammos decagrammus*
- lingcod, *Ophiodon elongatus*
- Pacific cod, *Gadus macrocephalus*
- Pacific whiting, *Merluccius productus*
- sablefish, *Anoplopoma fimbria*

Rockfish:
- aurora rockfish, *Sebastes aurora*
- bank rockfish, *S. rufus*
- black rockfish, *S. melanops*
- black and yellow rockfish, *S. chrysomelas*
- blackgill rockfish, *S. melanostomus*
- blue rockfish, *S. mystinus*
- bocaccio, *S. paucispinis*
- bronzespotted rockfish, *S. gilli*
- brown rockfish, *S. auriculatus*
- calico rockfish, *S. dalli*
- California scorpionfish, *Scorpaena guttata*
- canary rockfish, *Sebastes pinniger*
- chilipepper, *S. goodei*
- China rockfish, *S. nebulosus*
- copper rockfish, *S. caurinus*
- cowcod, *S. levis*
- darkblotched rockfish, *S. crameri*
- dusty rockfish, *S. ciliatus*
- flag rockfish, *S. rubrivinctus*
- gopher rockfish, *S. carnatus*
- grass rockfish, *S. rastrelliger*
- greenblotched rockfish, *S. rosenblatti*
- greenspotted rockfish, *S. chlorostictus*
- greenstriped rockfish, *S. elongatus*
- harlequin rockfish, *S. variegatus*
- honeycomb rockfish, *S. umbrosus*
- kelp rockfish, *S. atrovirens*
- longspine thornyhead, *Sebastolobus altivelis*
- Mexican rockfish, *Sebastes macdonaldi*
- olive rockfish, *S. serranoides*
- Pacific ocean perch, *S. alutus*
- pink rockfish, *S. eos*
- quillback rockfish, *S. maliger*
- redbanded rockfish, *S. babcocki*
- redstripe rockfish, *S. proriger*
- rosethorn rockfish, *S. helvomaculatus*
- rosy rockfish, *S. rosaceus*
- rougheye rockfish, *S. aleutianus*
- sharpchin rockfish, *S. zacentrus*
- shortbelly rockfish, *S. jordani*
- shortraker rockfish, *S. borealis*
- shortspine thornyhead, *Sebastolobus alascanus*
- silvergray rockfish, *Sebastes brevispinis*
- speckled rockfish, *S. ovalis*
- splitnose rockfish, *S. diploproa*
- squarespot rockfish, *S. hopkinsi*
- starry rockfish, *S. constellatus*

stripetail rockfish, *S. saxicola*
tiger rockfish, *S. nigrocinctus*
treefish, *S. serriceps*
vermilion rockfish, *S. miniatus*
widow rockfish, *S. entomelas*
yelloweye rockfish, *S. ruberrimus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera are *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*.

Flatfish:
arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*
butter sole, *Isopsetta isolepis*
curlfin sole, *Pleuronichthys decurrens*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
rock sole, *Lepidopsetta bilineata*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as "exempted gear."

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

Length overall (LOA) (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

Limited entry fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

Open access fishery means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Trawl gear.

Owner of a vessel or *vessel owner*, as used in this subpart, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

Pacific Coast Groundfish Fishery Management Plan (PCGFMP) means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Permit holder means a permit owner or a permit lessee.

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

Permit owner means a person who owns a limited entry permit.

Person, as it applies to limited entry and open access fisheries conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Director, Northwest Region, NMFS. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, "Regional Director" means the Director, Northwest Region, NMFS, acting upon the recommendation of the Director, Southwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

Round weight (See § 600.10).

Shoreside processing means processing that takes place in a facility that is fixed permanently to land.

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Totally lost means the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may be taken and retained, possessed, or landed from a single fishing trip.

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic

industry will be conducted biannually by NMFS to determine amounts of fish that will be made available to foreign fishing and JVP. No additional Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

§ 660.304 Management areas.

(a) *Vancouver.* (1) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°4300 W. long.) south of the International Boundary between the U.S. and Canada (at 48°2937.19 N. lat., 124°4333.19 W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(3) The southern limit is 47°30′ N. lat.

(b) *Columbia.* (1) The northern limit is 47°30′ N. lat.

(2) The southern limit is 43°00′ N. lat.

(c) *Eureka.* (1) The northern limit is 43°00′ N. lat.

(2) The southern limit is 40°30′ N. lat.

(d) *Monterey.* (1) The northern limit is 40°30′ N. lat.

(2) The southern limit is 36°00′ N. lat.

(e) *Conception.* (1) The northern limit is 36°00′ N. lat.

(2) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(f) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 660.305 Vessel identification.

(a) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(b) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

§ 660.306 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any prohibited species (defined in § 660.302) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.322(c).

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under part 600.745.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under part 600.745.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321, § 660.323, or under an EFP issued under part 600 of this chapter.

(g) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round-weight equivalent).

(i) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.322, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(j) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324.

(k) Take and retain or receive, except as cargo, Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific

whiting on board, during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324; when taking and retention is prohibited under § 663.323(a)(4)(iv), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

(l) Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.323(b)(1)(ii)), more than the amount of the trip limit set for black rockfish by § 660.323 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), or between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board (unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(n) Fail to carry onboard a vessel that vessel's limited entry permit if required.

(o) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(p) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

(r) Refuse to submit fishing gear of fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Director or the Council.

(b) *Annual actions.* The Pacific Coast groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly harvest guidelines, limited entry and open access allocations, or other approved fishery allocations. Annual specifications and management measures are developed at two Council meetings and published in the **Federal Register** at the beginning of the year, according to the standards and procedures in the PCGFMP and other applicable law.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register.**

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the **Federal Register.**

§ 660.322 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: Trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth in this paragraph (b)(2). The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured), less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE IN INCHES [1]

Trawl conception type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.6 cm; 4.5 inches = 11.4 cm.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except as

provided in paragraph (c)(2) of this section.

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. lat.

(e) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(f) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

(g) *Spears.* Spears may be propelled by hand or by mechanical means.

§ 660.323 Catch restrictions.

(a) Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in this section.

(1) *Black rockfish.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

(2) *Nontrawl sablefish.* This paragraph (a)(2) applies to the limited entry fishery, except for paragraphs (a)(2)(i) and (v), which also apply to the open-access fishery.

(i) *Pre-season closure—open-access and limited entry fisheries.*

(A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed from 12 noon August 29 through 12 noon September 1.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters from 12 noon August 29 through 12 noon September 1, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after 12 noon on August 31.

(ii) *Regular season—limited entry fishery.* The regular season for the limited entry nontrawl sablefish fishery begins at 1201 hours on August 6. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

(iii) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. The length of the mop-up season and amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Director in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation and the number of participants anticipated. The Regional Director may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season.

(iv) *Other announcements.* The dates and times that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the **Federal Register**, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date. A vessel landing sablefish in Puget Sound that was taken under a limited entry permit with nontrawl gear during a regular season is not subject to trip limits on that trip (except the regular season trip limits to protect juvenile sablefish), provided the landing complies with Washington State regulations governing sablefish landings in Puget Sound after the regular season.

(v) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

(3) *Pacific whiting—*(i) *Season.* The regular season for Pacific whiting begins on May 15 north of 42°00′ N. lat., on March 1 between 42°00′ N. lat. and 40°30′ N. lat., and on April 15 south of 40°30′ N. lat. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (b) of this section.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm south of the Klamath River mouth).

(B) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13′18″ W. long., then southerly along a line of 167 True to 46°11′06″ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(iii) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.321 or § 660.323, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00′ to 40°30′ N. lat.).

(iv) *At-sea processing.* Pacific whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border).

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in *The Nautical Almanac* issued annually by the

Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(4) *Pacific whiting—allocation.* The following provisions apply from 1994 through 1996—

(i) *Shoreside reserve.* When 60 percent of the commercial harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (a)(4)(iv) of this section. The remaining 40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of reserve.* That portion of the commercial harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to insure full utilization of the resource.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when 60 percent of the commercial harvest guideline for whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will publish a document in the **Federal Register** to announce any release of the reserve on August 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they first have been designated as "routine" according to the applicable procedures in the PCGFMP. The following catch restrictions are designated as routine for the reasons given in paragraph (b)(1)(ii) of this section:

(1) *Commercial-limited entry and open access fisheries—*

(i) *Species and gear.* (A) Widow rockfish—all gear—trip landing and frequency limits.

(B) *Sebastes* complex—all gear—trip landing and frequency limits.

(C) Yellowtail rockfish—all gear—trip landing and frequency limits.

(D) Pacific ocean perch—all gear—trip landing and frequency limits.

(E) Sablefish—all gear—trip landing, frequency, and size limits.

(F) Dover sole—all gear—trip landing and frequency limits.

(G) Thornyheads (shortspine thornyheads or longspine thornyheads, separately or combined)—all gear—trip landing and frequency limits.

(H) Bocaccio—all gear—trip landing and frequency limits.

(I) Pacific whiting—all gear—trip landing and frequency limits.

(J) Lingcod—all gear—trip landing and frequency limits; size limits.

(K) Canary rockfish—all gear—trip landing and frequency limits.

(L) All groundfish, separately or in any combination—any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)—trip landing and frequency limits. (Size limits designated routine in this section continue to apply.)

(ii) *Reasons for "routine" management measures.* All routine management measures on commercial fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Trip landing and frequency limits—to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) Size limits—to protect juvenile fish; to extend the fishing season.

(2) *Recreational*—(i) *Species and gear.* (A) Lingcod—all gear—bag and size limits.

(B) Rockfish—all gear—bag limits.

(ii) *Reasons for "routine" management measures.* All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Bag limits—to spread the available catch over a large number of anglers; to avoid waste; for consistency with state regulations.

(B) Size limits—to protect juvenile fish; to enhance the quality of the recreational fishing experience; for consistency with state regulations.

(c) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

§ 663.324 Pacific Coast treaty Indian fisheries.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes' usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02'15" N. lat. (Norwegian Memorial) and east of 125°44'00" W. long.

(2) *Quileute*—That portion of the FMA between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River) and east of 125°44'00" W. long.

(3) *Hoh*—That portion of the FMA between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River) and east of 125°44'00" W. long.

(4) *Quinault*—That portion of the FMA between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis) and east of 125°44'00" W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09'30" N. lat.) and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

§ 660.331 Limited entry and open access fisheries—general.

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under this subpart, or if a small limited entry fleet is incorporated into the limited entry fishery under § 660.338, the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in the PCGFMP.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

§ 660.333 Limited entry fishery-general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types

of gear endorsements: "A," "Provisional A," "B," and "Designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) *Renewal of limited entry permits and gear endorsements.*

(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit owner.

(c) *Transfer and registration of limited entry permits and gear endorsements.*

(1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD (see part 600 for address of the Regional Director). Contents of the application, and required supporting documentation, are specified in the application form.

(4) The FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(e) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD.

Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Transfers.* Limited entry permits are transferable as follows:

(1) The permit owner may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person. The permit holder may register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 660.335(b), 660.336(b), and 660.337(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(g) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(h) *Vessel size endorsements*—(1) *General.* The limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit was initially issued under section 14.3.2.3.8 of the FMP [re pre-1991 replacement vessels qualifying for "provisional A" permits] for a replacement vessel that was more than 5 ft (1.52 m) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit was initially issued to a replacement trawl vessel that was more than 5 ft (1.52 m) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement under paragraph (h)(1)(iii) of this section.

(iii) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls

between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(i) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

§ 660.334 Limited entry permits—"A" endorsement.

(a) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) An "A" endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 660.333.

(c) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 660.333).

§ 660.335 Limited entry permits—"Provisional A" endorsement.

(a) A "provisional A" endorsement entitles the permit owner to fish for all groundfish species with the types of limited entry gear specified in the endorsement.

(b) A "provisional A" endorsement is not transferrable except as specified in the PCGFMP.

(c) The holder of a "provisional A" endorsement must comply with the requirements set out in the PCGFMP at 14.3.2.4 in order for the permit to be upgraded to an "A" permit.

(d) A "provisional A" endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement or upon failure to renew the limited entry permit. A "provisional A" endorsement that expires will not be reissued.

§ 660.336 Limited entry permits—"B" endorsement.

(a) A limited entry permit with a "B" endorsement entitles the permit owner to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner.

(c) All "B" endorsements expire on December 31, 1996.

(d) A "B" endorsement expires on failure to renew the limited entry permit.

§ 660.337 Limited entry permits—"designated species B" endorsement.

(a) *Issuance criteria*—(1) *General. Designated species* means Pacific whiting, jack mackerel north of 39° N. lat., and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If, at any time during the fishing year, the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the Federal Register.

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applications are available from the FMD. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). A vessel which replaces a lost vessel, consistent with the standards in the PCGFMP, has the same seniority status as the replaced vessel. Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the permit recipient to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of the PCGFMP, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

§ 660.338 Limited entry permits—new permits.

(a) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued according to the standards and procedures set out in the PCGFMP and will carry the rights explained therein. Window period is that period from July 11, 1984, through August 1, 1988.

(b) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or NMFS, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement

for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued. Permits issued under this section will be issued according to the procedures and standards set out in the PCGFMP and will carry the rights explained therein.

(c) An owner of a vessel that qualifies under this section must apply to the FMD for a permit within 180 days of incorporation of the limited entry fleet of which the vessel is a part or within 180 days of the effective date of the prohibition of that vessel's gear. Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

§ 660.339 Limited entry permit fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department as of the date of the decision.

§ 660.341 Limited entry permit sanctions.

Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

Subpart H—West Coast Salmon Fisheries

§ 660.401 Purpose and scope.

This subpart implements the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California developed by the Pacific Fishery Management Council. These regulations govern the management of West Coast salmon fisheries in the EEZ.

§ 660.402 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where barbless hooks are specified, hooks manufactured with barbs can be made barbless by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 660.408, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see Figure 3 of this subpart) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails (see Figure 3 of this subpart).

Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29′37″ N. lat., 124°43′33″ W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line [1] connecting the following coordinates:

N. lat.	*W. long.*
48°29′37.19″	124°43′33.19″
48°30′11″	124°47′13″
48°30′22″	124°50′21″
48°30′14″	124°52′52″
48°29′57″	124°59′14″
48°29′44″	125°00′06″
48°28′09″	125°05′47″
48°27′10″	125°08′25″
48°26′47″	125°09′12″
48°20′16″	125°22′48″
48°18′22″	125°29′58″
48°11′05″	125°53′48″
47°49′15″	126°40′57″
47°36′47″	127°11′58″
47°22′00″	127°41′23″
46°42′05″	128°51′56″
46°31′47″	129°07′39″

(3) The southern boundary of the fishery management area is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates:

N. lat.	*W. long.*
32°35′22″	117°27′49″
32°37′37″	117°49′31″
31°07′58″	118°36′18″
30°32′31″	121°51′58″

(4) The inner boundaries of the fishery management area are subject to

[1] The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

change if the Secretary assumes responsibility for the regulation of the salmon fishery within state waters under section 306(b) of the Magnuson Act.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, that has a present capability for:

(1) On board freezing of the catch.

(2) Storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 660.408 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 660.408.

Regional Director means the Director, Northwest Region, NMFS, or a designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, NMFS, acting in consultation with the Director, Southwest Region, NMFS.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including, but not limited to:

Chinook (king) salmon, *Oncorhynchus tshawytscha*
Coho (silver) salmon, *Oncorhynchus kisutch*
Pink (humpback) salmon, *Oncorhynchus gorbuscha*
Chum (dog) salmon, *Oncorhynchus keta*
Sockeye (red) salmon, *Oncorhynchus nerka*
Steelhead (rainbow trout), *Oncorhynchus mykiss*

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 660.408.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

§ 660.403 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter, § 660.2, and paragraphs (b) and (c) of this section.

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.305.

(c) Any person fishing subject to this subpart is bound by the international boundaries of the fishery management area described in § 660.402, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 660.404 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementation of any applicable fishery management plan are collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection requirements. Except as provided in paragraph (b) of this section, no additional catch reports will be required of fishermen or processors so long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide NMFS with statistical information adequate for management.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 660.408.

§ 660.405 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 660.408(k) for treaty Indian fishing;

(v) In violation of any action issued under this subpart; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board, so long as no fishing is being conducted.

(4) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(5) Take and retain or possess on board a fishing vessel any species of salmon that is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(6) Possess on board a fishing vessel a salmon, for which a minimum total length is extended or cannot be determined, except that dressed, head-off salmon may be possessed on board a freezer trolling vessel, unless the adipose fin of such salmon has been removed.

(7) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this subpart.

(8) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear, so long as that gear is legal in the fishery for which it is being used.

(9) Take and retain, possess, or land any steelhead taken in the course of commercial fishing in the fishery management area, unless such take and retention qualifies as treaty Indian fishing.

(10) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(11) Refuse to submit fishing gear or catch subject to such person's control to

inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at part 300 of this title. Pacific halibut that cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this subpart.

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

§ 660.406 Exempted fishing.

(a) NMFS may allow such exempted fishing in the fishery management area as may be recommended by the Council, the Federal Government, state government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) NMFS will not allow any exempted fishery recommended by the Council unless NMFS determines that the purpose, design, and administration of the exempted fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Director to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

§ 660.407 Treaty Indian fishing.

Except as otherwise provided in this subpart, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this subpart, the Magnuson Act, and any other regulations issued under the Magnuson Act.

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing the action in the Federal Register under § 660.411. Management specifications are set forth in paragraphs (b) through (n) of this section.

(b) *Allowable ocean harvest levels.* The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(c) *Allocation of ocean harvest levels*—(1) *Coho and chinook from the U.S.-Canada border to Cape Falcon*—(i) *Overall allocation schedule.* Initial allocation of coho and chinook salmon north of Cape Falcon, OR, will be based on the following schedule:

Allowable non-treaty ocean harvest (thousands of fish)	Percentage [1]	
	Commercial	Recreational
Coho:		
0–300	25	75
>300	60	40
Chinook:		
0–100	50	50
>100–150	60	40
>150	70	30

[1] The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (vii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(viii) and (ix) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) *Preseason trades.* Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures. Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline.

(iv) *Commercial allocation.* The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(v) *Recreational allocation.* The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. The Council may also establish additional subarea quotas with a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

(A) *Coho distribution.* The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to

provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

(B) *Chinook distribution.* Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph (c)(1)(iii) of this section.

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(viii) of this section.

(vii) *Other inseason provisions.* Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

(viii) *Allocation objectives.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(ix) *Fishery allocation priorities.* The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(2) *Coho south of Cape Falcon*—(i) *Allocation schedule.* Preseason allocation shares of coho salmon south of Cape Falcon, OR, will be determined by an allocation schedule, which is based on the following formula. The formula will be used to interpolate between allowable harvest levels as shown in the table below.

(A) Up to 350,000 allowable ocean harvest: The first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: The recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: The recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	[1] 33	[1] 16.5	[1] 167	[1] 83.5
100	([1])	([1])	([1])	([1])

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) *Geographic distribution.* Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

(iii) *Recreational allocation at 167,000 fish or less.* When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

(iv) *Oregon coastal natural coho.* At Oregon coastal natural coho spawning escapements of 28 or fewer adults per mile, the allocation provisions of paragraph (c)(2)(i) of this section do not apply. Fisheries will be established that will provide only the minimum incidental harvest of Oregon coastal natural coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the Oregon coastal natural coho stock.

(v) *Inseason reallocation.* No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

(d) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

(e) *Minimum harvest lengths.* The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially caught salmon may be necessary for

conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

(f) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of some combination of species. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

(g) *Fishing gear restrictions.* Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or modified upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

(h) *Seasons*—(1) *In general.* Seasons for commercial and recreational fishing will be established or modified taking into account allowable ocean harvest levels and quotas, allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinook or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(3) *Recreational seasons.* If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

(i) *Quotas* (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California). Quotas for commercial, recreational, and treaty Indian fishing may be established or modified to ensure that allowable ocean harvests are not exceeded. Quotas may be fixed or adjustable and used in conjunction with seasons. Any quota established does not represent a guaranteed ocean harvest, but a maximum ceiling on catch.

(j) *Selective fisheries.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(k) *Treaty Indian fishing.* (1) NMFS will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(3) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

(l) *Yurok and Hoopa Valley tribal fishing rights.* For purposes of section 303 of the Magnuson Act, the federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion[2] dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303 of the Magnuson Act, allowable ocean harvest must be consistent with all applicable laws.

[2] Copies of the Solicitor's Opinion are available from the Director, Southwest Region, NMFS.

(m) *Inseason notice procedures.* Telephone hotlines and USCG broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing.

(n) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

§ 660.409 Inseason actions.

(a) *Fixed inseason management provisions.* NMFS is authorized to take the following inseason management actions annually, as appropriate.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under § 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, NMFS will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided NMFS finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by an inseason action issued under § 660.411.

(3) *Adjustment for error in preseason estimates.* NMFS may, by an inseason action issued under § 660.411, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified, provided that such correction can be made in a timely manner to affect the involved fishery without disrupting the capacity to meet

the objectives of the fishery management plan.

(b) *Flexible inseason management provisions.* (1) The Regional Director will consult with the Chairman of the Council and the appropriate State Directors prior to taking any of the following flexible inseason management provisions, which include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Modification of recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

(i) Predicted sizes of salmon runs.

(ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations, if applicable.

(iii) Amount of commercial, recreational, and treaty Indian catch for each species in the area to date.

(iv) Amount of commercial, recreational, and treaty Indian fishing effort in the area to date.

(v) Estimated average daily catch per fisherman.

(vi) Predicted fishing effort for the area to the end of the scheduled season.

(vii) Other factors, as appropriate.

§ 660.410 Escapement goals.

(a) *Current escapement goals.* The following specific escapement goals are in effect. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning[1] escapement goal
Sacramento River Fall Chinook[2]	122,000 to 180,000 for natural and hatchery
Klamath River Fall Chinook	Between 33 and 34 percent of the potential adult natural spawners, but no fewer than 35,000 naturally spawning adults in any one year.[3] The brood escapement rate will average 33 to 34 percent over the long term. The escapement rate for each brood may vary from the 33 to 34 percent in order to achieve the required tribal/non-tribal annual allocation.
Oregon Coastal Chinook	150,000 to 200,000 natural
Columbia River Chinook:	
Upper River Fall	40,000 bright adults above McNary Dam.
Upper River Summer	80,000 to 90,000 adults above Bonneville Dam.
Upper River Spring	100,000 to 200,000 adults above Bonneville Dam.
Lower River Spring (Willamette River)	30,000 to 45,000 based on run size
Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas[4]
Puget Sound Pink	900,000 natural.
Lake Washington Sockeye[5]	300,000 to Lake Washington.
Columbia River Sockeye[5]	65,000 over Priest Rapids.

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

[2] Includes upper and lower river components.

[3] The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.

[4] At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

[5] These stocks represent a negligible component of the Washington ocean harvest.

(b) *Modification of escapement goals.* NMFS is authorized, through an action issued under § 660.411, to modify an escapement goal if—

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council and the Salmon Technical Team, justifies modification of an escapement goal;

(2) For Oregon coastal chinook, specific goals are developed within the overall goal for north coast and south coast stocks; or

(3) Action by a Federal court indicates that modification of an escapement goal is appropriate.

§ 660.411 Notification and publication procedures.

(a) *Notification and effective dates.* (1) Annual and certain other actions taken under §§ 660.408 and 660.410 will be implemented by an action published in the **Federal Register**, and will be effective upon filing, unless a later time is specified in the action.

(2) Inseason actions taken under § 660.409 will be by actual notice available from telephone hotlines and USCG broadcasts, as specified annually. Inseason actions will also be published in the **Federal Register** as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (telephone hotlines and USCG broadcasts), or at the time the inseason action published in the **Federal Register** is effective, whichever comes first.

(3) Any action issued under this section will remain in effect until the expiration date stated in the action or until rescinded, modified, or

superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(b) *Public comment.* If time allows, NMFS will invite public comment prior to the effective date of any action published in the **Federal Register**. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

(c) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Region, NMFS. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available for public review during normal office hours at the Southwest Region, NMFS.

TABLE 1 TO PART 660.—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years	Gear restriction
Makapuu	E	P—2,000 kg	2	S
		G—600 kg	2	S
		B—600 kg	2	S
Ke-ahole Point	C	P—67 kg	1	
		G—20 kg	1	S
		B—17 kg	1	S
Kaena Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Brooks Bank	C	P—17 kg	1	N
		G—133 kg	1	N
		B—111 kg	1	N
180 Fathom Bank	C	P—222 kg	1	N
		G—67 kg	1	N
		B—56 kg	1	N
Westpac Bed	R	Zero (0 kg)		
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions.		X—1,000 kg (all species combined except black corals) per area.	1	N

Notes:
1. Types of corals: P=Pink G=Gold B=Bamboo.
2. There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§660.3). State regulations on black coral harvesting are not superseded by this part.
3. Only ⅓ of the indicated amount is allowed if nonselective gear is used; that is, the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when S+5N=Q, where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.
4. Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.
5. S=Selective gear only; N=Nonselective or selective gear.
6. No authorized fishing for coral in refugia.

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS

Vessel length	Capacity rating
<20	1.00
21	1.13
22	1.27
23	1.42
24	1.58
25	1.75
26	1.93
27	2.12
28	2.32
29	2.53
30	2.76
31	2.99
32	3.24
33	3.50
34	3.77
35	4.05
36	4.35
37	4.66
38	4.98
39	5.31
40	5.66

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
41	6.02
42	6.39
43	6.78
44	7.18
45	7.59
46	8.02
47	8.47
48	8.92
49	9.40
50	9.88
51	10.38
52	10.90
53	11.43
54	11.98
55	12.54
56	13.12
57	13.71
58	14.32
59	14.95
60	15.59
61	16.25

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
62	16.92
63	17.61
64	18.32
65	19.04
66	19.78
67	20.54
68	21.32
69	22.11
70	22.92
71	23.74
72	24.59
73	25.45
74	26.33
75	27.23
76	28.15
77	29.08
78	30.04
79	31.01
80	32.00
81	33.01
82	34.04

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
83	35.08
84	36.15
85	37.24
86	38.34
87	39.47
88	40.61
89	41.77
90	42.96
91	44.16
92	45.38
93	46.63
94	47.89
95	49.17
96	50.48
97	51.80
98	53.15
99	54.51
100	55.90
101	57.31
102	58.74
103	60.19
104	61.66
105	63.15
106	64.67
107	66.20
108	67.76
109	69.34
110	70.94
111	72.57
112	74.21
113	75.88
114	77.57
115	79.28
116	81.02
117	82.77
118	84.55
119	86.36
120	88.18
121	90.03
122	91.90
123	93.80
124	95.72
125	97.66
126	99.62
127	101.61
128	103.62
129	105.66
130	107.72
131	109.80
132	111.91
133	114.04
134	116.20
135	118.38
136	120.58
137	122.81
138	125.06
139	127.34
140	129.64
141	131.97
142	134.32
143	136.70
144	139.10
145	141.53
146	143.98
147	146.46
148	148.96
149	151.49

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
150	154.05
151	154.68
152	155.31
153	155.94
154	156.57
155	157.20
156	157.83
157	158.46
158	159.10
159	159.73
160	160.36
161	160.99
162	161.62
163	162.25
164	162.88
165	163.51
166	164.14
167	164.77
168	165.41
169	166.04
170	166.67
171	167.30
172	167.93
173	168.56
174	169.19
175	169.82
176	170.45
177	171.08
178	171.72
179	172.35
180	172.98
181	173.61
182	174.24
183	174.87
184	175.50
185	176.13
186	176.76
187	177.40
188	178.03
189	178.66
190	179.29
191	179.92
192	180.55
193	181.18
194	181.81
195	182.44
196	183.07
197	183.71
198	184.34
199	184.97
200	185.60
201	186.23
202	186.86
203	187.49
204	188.12
205	188.75
206	189.38
207	190.02
208	190.65
209	191.28
210	191.91
211	192.54
212	193.17
213	193.80
214	194.43
215	195.06
216	195.69

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
217	196.33
218	196.96
219	197.59
220	198.22
221	198.85
222	199.48
223	200.11
224	200.74
225	201.37
226	202.01
227	202.64
228	203.27
229	203.90
230	204.53
231	205.16
232	205.79
233	206.42
234	207.05
235	207.68
236	208.32
237	208.95
238	209.58
239	210.21
240	210.84
241	211.47
242	212.10
243	212.73
244	213.36
245	213.99
246	214.63
247	215.26
248	215.89
249	216.52
250	217.15
251	217.78
252	218.41
253	219.04
254	219.67
255	220.30
256	220.94
257	221.57
258	222.20
259	222.83
260	223.46
261	224.09
262	224.72
263	225.35
264	225.98
265	226.61
266	227.25
267	227.88
268	228.51
269	229.14
270	229.77
271	230.40
272	231.03
273	231.66
274	232.29
275	232.93
276	233.56
277	234.19
278	234.82
279	235.45
280	236.08
281	236.71
282	237.34
283	237.97

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
284	238.60
285	239.24
286	239.87
287	240.50
288	241.13
289	241.76
290	242.39
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

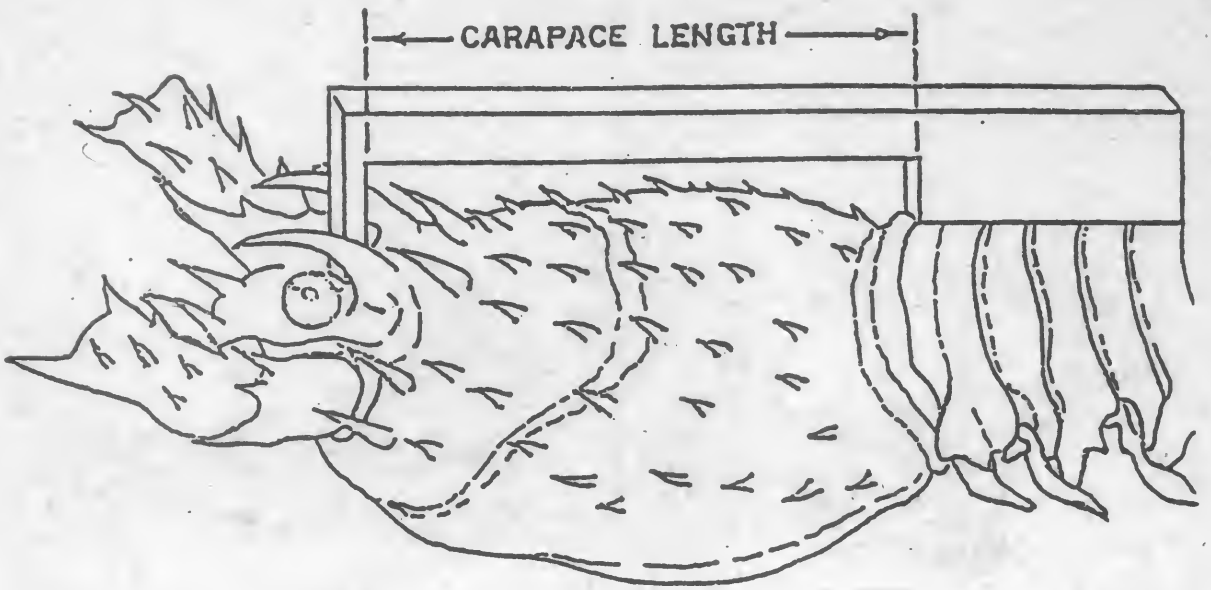
Vessel length	Capacity rating
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93
360	286.56
361	287.19
362	287.82
363	288.46

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
>400	311.80

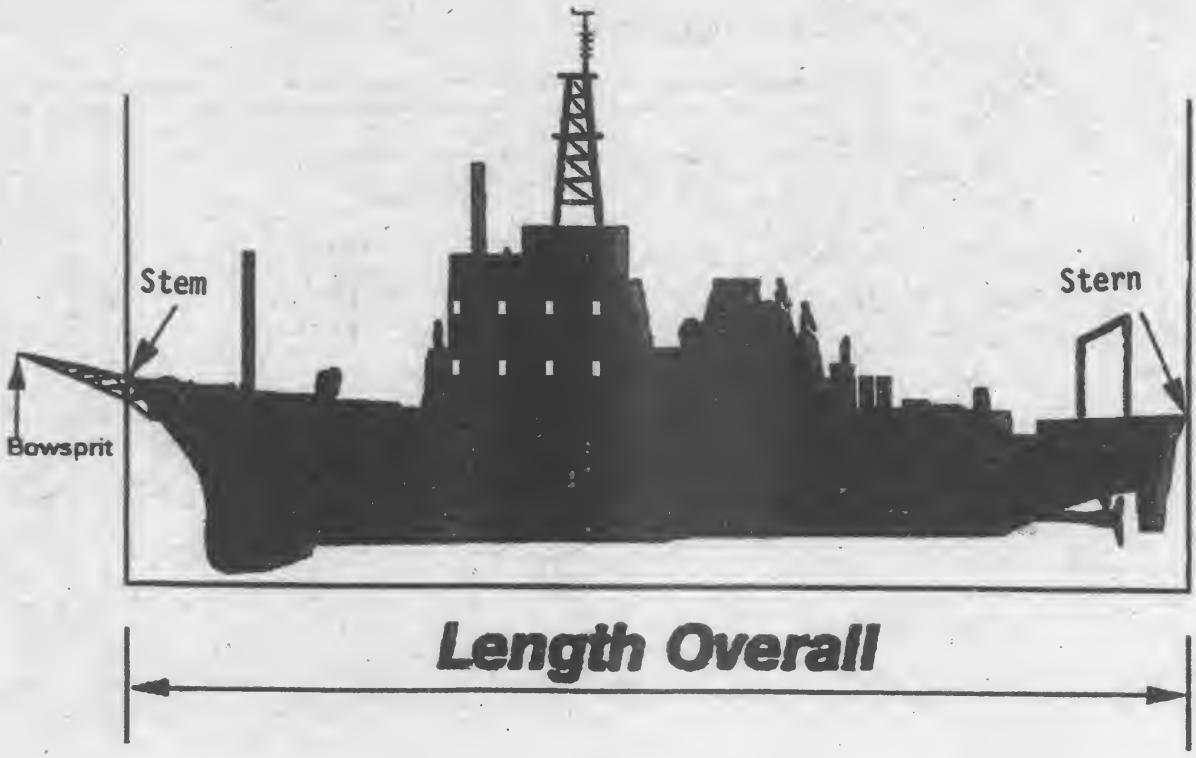
BILLING CODE 3510–22–P

Figure 1 to Part 660—Carapace Length of Lobsters



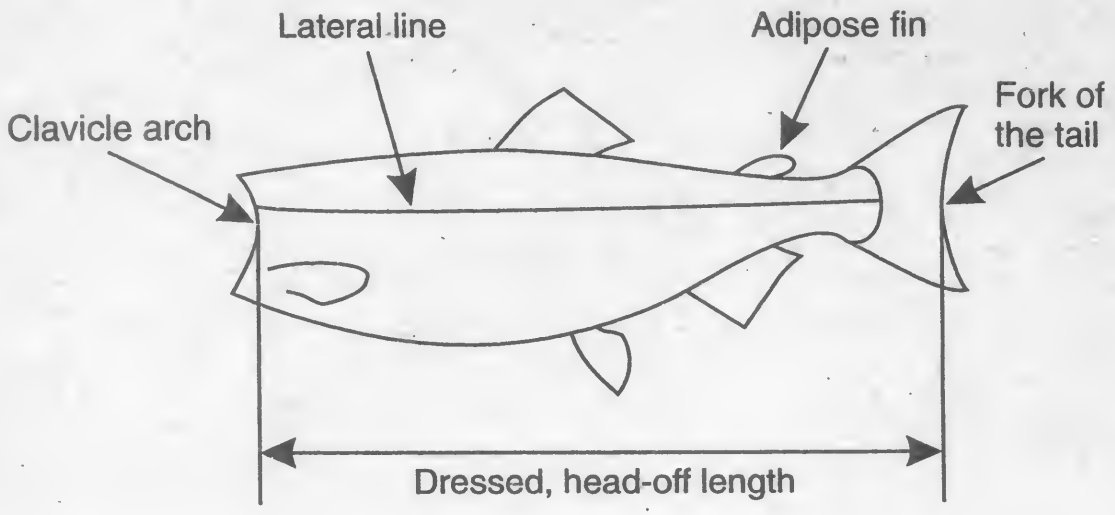
Carapace Length of Lobsters

Figure 2 to Part 660—Length of Longline Vessel



Length of Longline Vessel

Figure 3 to Part 660—Dressed, Head-off Length of Salmon



Dressed, Head-off Length of Salmon

PARTS 661, 663, 680, 681, 683, and 685—[REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 661, 663, 680, 681, 683, and 685 are removed.

[FR Doc. 96–16234 Filed 7–1–96; 8:45 am]
BILLING CODE 3510–22–C

federal register

Tuesday
July 2, 1996

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 415

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1997; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, and 415

[BPD–852–P]

RIN 0938–AH40

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1997

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

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses several policy changes affecting Medicare payment for physician services including payment for diagnostic services and transportation in connection with furnishing diagnostic tests. The proposed rule also discusses comprehensive locality changes and changes in the procedure status codes for a variety of services.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 3, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–852–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–852–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20530.

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FOR FURTHER INFORMATION CONTACT: Shana Olshan, (410) 786–5714.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

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G. Payments for Supervising Physicians in Teaching Settings
H. Change in Global Periods for Four Percutaneous Biliary Procedures
I. Rural Hospital Impact Statement
Addendum A—1996 Geographic Adjustment Factors (GAFs) by Medicare Payment Locality/Locality Part for January 1, 1996 Localities and Proposed Option, Fee Schedule Areas (FSAs), in Descending Order of Difference
Addendum B—Medicare Fee Schedule Areas (Localities) and 1996 Geographic

Adjustment Factors (GAFs), Current and Proposed Option by State and County/County Part

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA	American Medical Association
CFR	Code of Federal Regulations
CPT	[Physicians'] Current Procedural Terminology [4th Edition, 1996, copyrighted by the American Medical Association]
CY	Calendar year
EKG	Electrocardiogram
FSA	Fee Schedule Area
FY	Fiscal year
GAF	Geographic adjustment factor
GPCI	Geographic practice cost index
HCFA	Health Care Financing Administration
HCPAC	Health Care Professional Advisory Council
HCPCS	HCFA Common Procedure Coding System
HHS	[Department of] Health and Human Services
MEI	Medicare Economic Index
MSA	Metropolitan Statistical Area
OBRA	Omnibus Budget Reconciliation Act
OMB	Office of Management and Budget
PMSA	Primary Metropolitan Statistical Area
RVU	Relative Value Unit
TC	Technical Component

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to the conversion factors to preserve budget neutrality.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991 (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. The updates to the RVUs and fee schedule policies follow:

- November 25, 1992, as a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, as a final rule with comment period (58 FR 63626) to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physician services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.
- December 8, 1995, as a final rule with comment period (60 FR 63124) to revise various policies affecting payment for physician services including Medicare payment for physician services in teaching settings, the RVUs for certain existing procedure codes, and to establish interim RVUs for new and revised procedure codes. The rule also included the final revised 1996 geographic practice cost indices.

This proposed rule would affect the regulations set forth at 42 CFR part 405, which encompasses regulations on Federal health insurance for the aged and disabled; part 410, which consists of regulations on supplementary medical insurance benefits and part 415, which contains regulations on services of physicians in provider settings, supervising physicians in teaching settings, and residents in certain settings.

II. Specific Proposals for Calendar Year 1997

A. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

1. Background

From the inception of Medicare in 1966 until 1992, Medicare payments for physicians' services were made under the reasonable charge system. Under the reasonable charge system, Medicare payment localities for physicians' services were set by local Medicare carriers based on their knowledge of local physician charging patterns. As such, payment areas have had no consistent geographic basis. In general, localities tended to be geographic or political subdivisions such as States, counties, or cities, or designations such as urban and rural. Most of the localities changed little between 1966 and 1992. There were about 240 localities, including 16 States with statewide localities, under the reasonable charge system.

Section 1848 of the Act replaced the reasonable charge system of paying for physician services under section 1842(b) of the Act, with the physician fee schedule effective January 1, 1992. Section 1848(j)(2) of the Act defines a physician fee schedule payment area as the locality existing under section 1842(b) of the Act for purposes of computing payment amounts for physician services. Section 1848 did not, however, delete section 1842 of the Act, which gives the Secretary the authority to set localities. We believe the Congress enacted section 1848(j)(2) to allow us to retain existing localities to facilitate the statutory transition to the physician fee schedule, but not to preclude us from making locality changes if warranted. All locality changes are now made by HCFA through the rulemaking process. Medicare carriers are not allowed to set or revise physician fee schedule payment localities.

In the June 5, 1991 proposed rule for the physician fee schedule (56 FR 25832), we acknowledged the lack of consistency among localities and the significant demographic and economic changes that had occurred since localities were originally established. We also stated that we planned no large-scale locality changes until we evaluated the various studies on localities being done within HCFA and by outside groups such as the Physician Payment Review Commission and until after the statutory transition from the reasonable charge system to the fee schedule was completed in 1996. We

stated that until we decide on ultimate large-scale changes, the only locality changes we would consider would be requests for converting individual States with multiple localities to a single statewide locality if "* * * overwhelming support from the physician community for the changes can be demonstrated." This position was repeated in the November 1991 final rule on the physician fee schedule (56 FR 59514). This willingness to consider applications from physicians in a State for conversion to a statewide locality, if overwhelming support on the part of winning and losing physicians has been demonstrated, reflects our belief that statewide localities generally are preferable to the present Medicare localities because they simplify program administration and encourage physicians to practice in rural areas by reducing urban/rural payment differentials.

We received inquiries from a number of State medical societies concerning conversions to a statewide payment area. Under the law, payments vary among physician fee schedule areas only to the extent that resource costs vary as measured by the Geographic Practice Cost Index (GPCI). The GPCI is an index developed to measure resource cost differences among areas in the three components of the physician fee schedule—physician work, practice expenses, and malpractice expenses. Area geographic adjustment factors (GAFs) are weighted composites of the area GPCIs and are useful in comparing overall resource cost and payment level differences among areas. (A comprehensive explanation of the GPCIs and GAFs can be found in the June 24, 1994 proposed rule (59 FR 32756)).

We explained to the States inquiring about conversions to a statewide payment area that these conversions involve taking a weighted average of the existing locality GPCIs to form a new statewide GPCI. This means that there may be "losing" (usually urban) areas, as well as "winning" (usually rural) areas within a State if a conversion is made. We further informed the States that a simple resolution passed by the State medical society is not sufficient proof of overwhelming support among both rural and urban physicians for the change. To assist States in deciding whether to convert to a statewide payment area, we published an informational list of projected statewide GPCIs in the June 1991 proposed rule (56 FR 25972). A slightly revised list of projected statewide GPCIs was published in the December 1993 final rule (58 FR 63638). The revisions were made to ensure that any change to a statewide payment area would be done on a budget-neutral basis. That is, that the same amount of payments would be made within a State after the conversion to a statewide payment area as would have been made had the conversion not been made. A comprehensive revision of all GPCIs was made in 1995. A list of revised projected statewide GPCIs was published at Addendum E of the June 1994 proposed rule (59 FR 32789).

In most cases, States have been unable to generate the support of the losing physicians for the change. However, three States—Minnesota, Nebraska, and Oklahoma—were converted to statewide payment areas in 1992. (These conversions were announced in the November 1991 final rule (56 FR 59514).) Two additional States—North Carolina and Ohio—were converted to statewide payment areas in 1994. (These conversions were announced in the December 1993 final rule (58 FR 63638).) Iowa was converted to a statewide payment area in 1995. (This conversion was announced in the December 1994 final rule (59 FR 63416).) There are currently 210 payment areas under the physician fee schedule: 22 States with single payment areas; the District of Columbia (with surrounding Maryland and Virginia suburbs), Puerto Rico, and the Virgin Islands are 3 more single payment areas; and 28 multiple-locality States containing 185 payment areas. Table 1 summarizes existing physician fee schedule payment areas.

TABLE 1.—1996 MEDICARE PHYSICIAN FEE SCHEDULE PAYMENT LOCALITIES BY STATE AND OTHER

State	Localities
Single locality States:	
Alaska	1
Arkansas	1
Colorado	1
Delaware	1
Hawaii/Guam	1
Iowa	1
Minnesota	1
Montana	1
Nebraska	1
New Hampshire	1
New Mexico	1
North Carolina	1
North Dakota	1
Ohio	1
Oklahoma	1
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee	1
Utah	1
Vermont	1
Wyoming	1
22 States	22
Other:	
Wash. D.C	1
Puerto Rico	1
Virgin Islands	1
3 Other	3
Multiple locality States:	
Alabama	6
Arizona	6
California	28
Connecticut	4
Florida	4
Georgia	4
Idaho	2
Illinois	16
Indiana	3
Kansas	3
Kentucky	3
Louisiana	8
Maine	3
*Maryland	3
Massachusetts	2
Michigan	2
Mississippi	2
Missouri	7
Nevada	4
New Jersey	3
New York	8
Oregon	5
Pennsylvania	4
Texas	32
*Virginia	4
Washington	3
West Virginia	5
Wisconsin	11
28 States	185

Total 1996 Physician Fee Schedule Payment Localities=210.

*The Maryland and Virginia localities do not include the parts of Maryland (Prince Georges and Montgomery Counties) and Virginia (Fairfax and Arlington Counties and the city of Alexandria) included in the Washington, D.C. locality.

2. Locality Study

There are numerous possibilities for realigning payment localities. After considerable internal discussion, we narrowed the possibilities to four general options. A major goal in selecting these options is to continue to reduce the number of areas, leading to greater simplicity, understandability, ease of administration, reduction in urban/rural payment differences, reduction in payment differences among adjacent areas, and stability of payment updates resulting from the periodic GPCI revisions. Larger payment areas would mean larger data samples thereby leading to less volatile changes in the statutory periodic GPCI revisions. We contracted with Health Economics

Research, Inc. to conduct an analysis of these options. The four general fee schedule area (FSA) options are briefly summarized as follows:

- Option 1: Use current localities as building blocks. The 22 States currently with single localities would remain statewide FSAs. Statewide FSAs would be created in the 28 remaining States, except for current localities whose GAF exceeds the State GAF by a specified percentage threshold (for example, 5 percent).
- Option 2: Use metropolitan areas (Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), and New England County Metropolitan Areas) as building blocks. The 22 States currently with single localities would remain statewide FSAs. Statewide FSAs would be created in the 28 remaining States, except for metropolitan areas whose GAF exceeds the State GAF by a specified percentage threshold.
- Option 3: Use metropolitan areas as building blocks. The 22 States currently with single localities would remain statewide FSAs. Each of the 28 remaining States would be divided into 2 to 5 FSAs based on metropolitan area population size: greater than 3 million; 1 to 3 million; .25 to 1 million; less than .25 million; nonmetropolitan.
- Option 4: Use metropolitan areas as building blocks. Designate five nationwide FSAs based on metropolitan area population size: greater than 3 million; 1 to 3 million; .25 to 1 million; less than .25 million; nonmetropolitan.

We also asked Health Economics Research, Inc. for any suggestions for variations on these options that might improve them. We specifically requested that it recommend restructuring FSAs in the 11 States that have subcounty localities. These subcounty configurations, usually cities or zip codes, create unnecessary complexity and administrative burden.

Health Economics Research, Inc. issued its final report to us on November 1, 1995. The report consists of three volumes and can be obtained by requesting the following titles from the National Technical Information Service by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia:

- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume I: Text, NTIS PB96–118815.
- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume II: Appendix Tables, NTIS PB96–118823.
- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume III: Maps. NTIS PB96–118187.

3. Nonselected Options

While we began with four basic options, numerous variations are possible merely depending on which threshold GAF difference is selected. For example, Option 1 is based on the difference between the existing FSA GAF and the State GAF. Many variants on this option are available merely depending upon what threshold GAF difference between the FSAs and the State is selected, for example, 1 percent, 3 percent, 5 percent, 10 percent. Likewise, Option 2 produces many variations depending on the selected threshold GAF difference between the metropolitan area GAF and the State GAF. The major goal of revising FSAs is to simplify the payment areas and reduce payment differences among geographic areas while maintaining accuracy in tracking input price differences among areas. All options involve a certain trade-off between simplicity and understandability and accuracy of tracking of input prices. Many of the variations will produce a similar number of FSAs, but some do so at the expense of producing undesirable payment differences at boundaries or inaccuracies in tracking input prices.

After careful examination of all options and their variants, we believe that a variant of Option 1 is clearly the best choice. Before discussing, in depth, our reasons for selecting this option, the following is a brief discussion of why we eliminated Options 2, 3, and 4, in order of the least promising option. A more detailed discussion of these options with tables and maps can be found in the Health Economics Research, Inc. report.

Option 4 is the least promising approach to constructing FSAs. While it has the smallest number of FSAs, five nationwide, it is unacceptably inaccurate in tracking input price differences and creates too many large and inappropriate GAF differences across FSA boundaries. Grouping all metropolitan areas of the same size into a single category, regardless of geographic location, would substantially underpay some areas while overpaying others.

For example, the following large metropolitan areas would be substantially underpaid under Option 4 (Option 4 GAF/actual GAF is indicated in parenthesis): San Francisco (1.024/1.141); New York City (1.102/1.176); Nassau-Suffolk, New York (1.024/1.199); and Miami (1.024/1.116). Conversely, the following large cites would be overpaid under Option 4: Houston (1.102/1.030); Chicago (1.102/1.061); and Philadelphia (1.102/1.066). In addition to these inaccuracies, Option 4 creates some severe boundary problems. For example, the Houston-Galveston, Texas difference under Option 4 is 1.102 versus 0.937, a nearly 20 percentage point difference, versus an actual area GAF cost difference of 1.030 versus 1.001. Other examples may be found in the tables and maps in the Health Economics Research, Inc. report. In short, State-specific and metropolitan-area-specific factors, which Option 4 ignores, appear to be important influences on input prices. These factors are not captured by nationwide average inputs based on population size. While New York and Houston are in the same metropolitan area size classification of greater than 3 million, they have less in common with each other in terms of practice costs than they do with neighboring metropolitan areas of smaller size.

Option 3, we believe, is also unpromising. It creates the largest number of FSAs of any option and is geographically more complex than either Option 1 or Option 2. This option suffers from inadequate tracking of input price variations and inappropriate differences across boundaries, which are caused, as in Option 4, by grouping metropolitan areas by population class. Under this option, within a State, a metropolitan area's costliness is assumed to be dependent only on its population. This is not always an accurate assumption. A small metropolitan area that is a component of a major metropolitan region (for example, a PMSA) may have much higher input prices than a small freestanding metropolitan area surrounded by nonmetropolitan counties. Grouping these types of metropolitan areas together can lead to inaccurate GAFs and inappropriate differences at FSA boundaries. For example, Houston is the only Texas metropolitan area in the highest population category of 3 million or more, and has a GAF under Option 3 of 1.030. The contiguous Galveston PMSA is in the smallest population class of under 250,000. Its actual GAF is 1.001, but under Option 3 it is averaged with other small Texas metropolitan areas and is assigned a GAF of 0.926. Option 3, thus, underpays Galveston and creates a much larger GAF difference at the Houston-Galveston boundary than is warranted by the actual difference in input prices. Expensive Miami and Fort Lauderdale (with GAFs of 1.116 and 1.100) are grouped with lower-price Orlando and Tampa-St. Petersburg (with

GAFs of 1.008 and 0.992) under this option.

Option 2 is more promising than Options 3 and 4, but less promising than Option 1. While producing similar types and numbers of FSAs in some instances, depending on the threshold used, Option 1 has some advantages over Option 2. First, Option 1 is less disruptive because it uses existing localities as building blocks. Second, the urban payment localities in Option 1 tend to be smaller and more focused on high-cost urban counties and track input price variations better than the larger metropolitan area definitions used in Option 2. The metropolitan areas (MSAs, PMSAs, and New England County Metropolitan Statistical Areas) used as building blocks in this option are based on commuting patterns and are generally much larger than the current urban localities used in Option 1. Examples are the Washington, D.C. locality versus the Washington, D.C. PMSA; the Dallas locality versus the Dallas PMSA; the Chicago locality versus the Chicago PMSA; and the Houston locality versus the Houston PMSA. Input prices in the suburban counties in these PMSAs may be significantly lower than in the urban core and more similar to prices in other parts of the State. This may be especially true of some rural counties on the fringes of metropolitan areas that are categorized as part of the metropolitan area based on commuting patterns. For example, the Washington, D.C. PMSA includes portions of rural West Virginia. Under Option 2, this FSA would have a GAF of 1.090, compared to the actual GAF of Washington, D.C. of 1.122, and the actual GAF of the West Virginia counties included in the Washington, D.C. PMSA of 0.950. Input prices in the parts of rural West Virginia included in the Washington, D.C. PMSA have little in common with input prices in the Washington, D.C. urban core. Also, Option 2 presents significant problems in handling metropolitan areas that cross State boundaries.

4. Proposal

a. Proposed Variant of Option 1 (Option 1i, 5–Percent Threshold)

Under standard Option 1, the 22 States with a single FSA would remain statewide FSAs. Option 1 then presumes for the remaining 28 States that FSAs should be statewide for each State unless a sub-State payment locality has sufficiently higher input prices (as measured by its GAF) than the average input prices of its State (as measured by the State GAF) to meet a threshold difference. If the percentage difference between the locality's GAF and the State GAF exceeds a specified threshold, that locality would remain a distinct FSA. Otherwise, the locality would be merged into a residual FSA for that State. If no sub-State locality had sufficiently higher prices than the State average to meet the threshold difference, the State would become a single statewide locality. For example, Alabama currently has six localities. The GAFs range from a high of 0.957 for Locality 05, Birmingham, to a low of 0.902 for Locality 06, rest of Alabama. The State GAF is 0.932. Using a threshold of 5 percent, Alabama becomes a statewide locality as the Birmingham GAF exceeds the State GAF by only 2.68 percent. Using a threshold of 2.5 percent, Birmingham would remain a distinct FSA, while the other five localities would become one residual FSA as none of the other current localities exceed the State GAF by 2.5 percent.

Option 1 has several advantages over Options 2, 3, and 4. By using the current localities as building blocks, it is the most conservative of the options, is likely to be the least disruptive to physicians. and imposes the least administrative burden on HCFA and the Medicare carriers. GAFs for the largest, highest priced cities and metropolitan areas will not change under this option. Neither will the GAFs of current single locality States change. Many smaller cities and rural areas are combined into residual State areas, eliminating GAF differences among these areas and, thereby, increasing payments in rural areas and substantially reducing the number of localities. Since these areas usually have the smallest price input differences, combining them reduces the number of FSAs at the smallest loss in accuracy of input price tracking. In summation, Option 1 tends to divide States with large variation in input prices among localities into multiple FSAs, albeit significantly fewer than now exist in these States, while combining localities in States with little price variation into a single statewide locality.

However, the standard version of Option 1 has two shortcomings. First, some mid-sized metropolitan areas in large States such as California and Texas do not remain distinct FSAs despite their considerably higher input prices than in the rural and small city areas of their States with which they would be combined into a single residual area. Second, some large metropolitan areas in small States, such as Baltimore, Maryland, do not remain distinct FSAs. This is because the State GAF to which all locality GAFs are compared contains the high cost area GAFs. This makes it difficult for the mid-sized areas in large States to exceed the State GAF, even though their own GAFs may substantially exceed the GAF of all other localities in the residual area to which they would be assigned under Option 1. In large States with a wide range of GAFs, the mid-sized cities and metropolitan areas tend to be combined with the residual rest-of-State area. Their GAFs are sharply reduced, lessening the accuracy of input price tracking and creating large boundary differences in GAFs between large and mid-sized cities and at rural State boundaries that are not reflective of true input price differences.

For example, with the current payment localities, the contiguous California counties of Los Angeles and Ventura have 1996 GAFs of 1.103 and 1.079, respectively, a 2.4 percentage point difference. Under Option 1, with a 2.5-percent threshold, Ventura becomes part of the residual State area. Its GAF is reduced to 1.012, while Los Angeles's GAF remains at 1.103, a difference of 9.1 percentage points. Other examples of this large boundary effect, all assuming a 2.5-percent threshold, are: San Francisco versus Marin, California (1.153/1.063 currently versus 1.153/1.012 under Option 1); Dallas versus Fort Worth, Texas (1.006/0.977 currently versus 1.006/0.934 under Option 1). In the case of Baltimore, its GAF of 1.032 is primarily responsible for bringing the State GAF up to 1.016. Under Option 1, with a 2.5-percent threshold, it becomes part of a single statewide locality (excluding Maryland counties in the Washington, D.C. locality) with a GAF of 1.016, when in reality it is much more expensive than the rest of the State, which has a combined GAF excluding Baltimore of 0.964.

These problems are addressed in our proposed option, Option 1i, 5-percent threshold, a variant of Option 1. In this variant, the GAF of a locality is compared to the average GAF of lower-price localities in the State, rather than to the statewide average. (Like standard Option 1, the 22 States currently having single statewide localities remain statewide localities.) If this difference exceeds a percentage threshold, 5 percent in our proposal, the locality remains a distinct FSA. Otherwise, it becomes part of a statewide or rest-of-State residual FSA. Specifically, a State's localities are ranked from the highest to the lowest GAF. The GAF of the highest-price locality is compared to the weighted average GAF of all lower-price localities. If the percentage difference exceeds a specified threshold,

the highest-price locality remains a distinct FSA. If not, the State becomes a single statewide locality. If the highest-price locality remains a distinct FSA, the process is repeated (iterated, hence the designation Option 1i) for the second-highest-price locality. Its GAF is compared to the statewide average GAF excluding the two highest-price localities. If this difference exceeds the threshold, the second-highest-price locality remains a distinct FSA. The logic is repeated (iterated), moving down the ranking of localities by costliness, until the highest-price locality does not exceed the threshold and does not remain a distinct FSA. No further comparisons are made, and the remaining localities become a residual rest-of-State FSA. The GAF of a locality always is compared only to the average GAF of all lower-price localities. This ensures that the statewide or residual State FSA has relatively homogeneous input prices.

Option 1i, thus, has all of the advantages of Option 1, while addressing the problems inherent in Option 1: unwarranted boundary differences and large higher-price areas not being separate FSAs in small States. In comparison to Option 1, Option 1i breaks out more payment areas in large States containing a wide range of GAFs by defining more mid-sized cities/areas as distinct FSAs; it more consistently defines homogeneous residual State FSAs; and reduces unwarranted boundary differences.

As with Option 1 and Option 2, numerous variants of Option 1i are possible depending on the GAF threshold difference selected. We are proposing Option 1i with a 5-percent threshold. We believe that this option would attain the goal of simplifying the payment areas and reducing payment differences among areas while maintaining accuracy in tracking input prices.

A summary measure of an FSA option's accuracy in tracking input prices is the average percentage difference between the county GAF and the GAF of the payment locality to which that county is assigned. These differences are weighted by total physician services RVUs in each county so that inaccuracies in areas where more services are provided are emphasized. A summary measure of payment differences among adjacent geographic areas in an FSA option is the average difference of the GAFs between unique pairs of contiguous counties, weighted by the sum of the RVUs of the two counties. Table 2 shows these summary measures of input price accuracy and small area payment differences for proposed Option 1i, 5-percent threshold, compared to the current localities, statewide localities, and the extremes of a national fee schedule (the same payment everywhere for a specific service) and separate FSAs for all 3,223 counties.

TABLE 2.—PAYMENT ACCURACY AND SMALL AREA PAYMENT DIFFERENCE

Fee schedule area	Number of FSAs	Average county/FSA input price difference* (percent)	Average county boundary difference* (percent)
National	1	6.86	0.00
States	**53	4.06	0.73
Option 1i, 5% Threshold	87	2.09	1.78
1996 Localities	210	1.67	2.30
Counties	3223	0.00	3.18

*Weighted by total physician services RVUs.
** Includes Washington D.C., Puerto Rico, and the Virgin Islands.

Note: Input price accuracy is measured by the average absolute difference (weighted by total county RVUs) between the county GAF and the FSA GAF. Boundary differences are measured by the average absolute difference in county GAFs between all unique, contiguous county pairs, weighted by the sum of total RVUs of the contiguous counties.

At one extreme is a single national FSA with no geographic adjustments. Lack of a GAF obviously does not track input prices at all, resulting in an average payment error of 6.86 percent, but also avoids any payment boundary differences. At the other extreme is an FSA for each of the 3,223 counties, which perfectly tracks county input prices, but has the largest number of, and largest average difference across, payment boundaries. These two extremes highlight the tradeoff between tracking input price variations and avoiding differences among nearby areas.

The current payment localities result in an average payment error of 1.67 percent, with an average difference across boundaries of 2.30 percent. Our proposed Option 1i, 5-percent threshold, by itself, without the subcounty payment restructuring discussed below, would significantly reduce the number of payment areas from 210 to 87. It would reduce the average county boundary difference from 2.30 percent to 1.78 percent while increasing the average county input price error by only 0.42 percentage points from 1.67 percent to 2.09 percent.

b. Proposed Option 1i, 5–Percent Threshold, with Subcounty Payment Area Restructuring

We further propose to refine payment areas by combining with proposed Option 1i, 5-percent threshold, an additional restructuring of localities in the 11 States that currently have subcounty localities. Three of these States—California, Mississippi, and Pennsylvania—define subcounty localities by zip code. Eight States—Arizona, Connecticut, Kentucky, Massachusetts, Missouri, Nevada, New York, and Oregon employ city/town limits to define localities. The use of subcounty localities creates unnecessary complexity and administrative burden. One of the most compelling reasons to eliminate subcounty payment areas from payment localities is to reduce the administrative work required to maintain zip-code-to-locality crosswalks. Many States employ a zip-code-to-locality crosswalk when processing claims, but the continuous creation, deactivation, and redefinition of U.S. Postal Codes poses a significant obstacle in the maintenance of accurate locality definitions. Town boundaries can also be ambiguous. Since county boundaries are unambiguous and rarely change, aggregating subcounty parts to the county level would minimize the administrative burden of maintaining crosswalks.

Another reason to eliminate subcounty localities is simplicity. By aggregating subcounty areas to the county level, a uniform fee schedule system with no area smaller than a county can be introduced nationwide. Furthermore, since the input price data for GPCIs, and ultimately GAF values, are not available at a subcounty level, the subcounty areas provide no additional accuracy in measuring practice input price variations. More often, subcounty localities unnecessarily complicate the calculation of GAF values by requiring laborious tracking by zip code of the subcounty parts. The obvious method for eliminating subcounty localities is to expand a current locality's city/town or zip code boundaries to the surrounding county borders. In exploring this option, we defined "County Equivalent Localities" based on the following criteria:

- For a current locality that includes multiple cities/towns in noncontiguous counties, all counties with any areas in the current locality are incorporated into the new County Equivalent Locality definition.
- Counties currently divided between two localities are assigned to the locality where the largest portion of physician fee schedule services (RVUs) are provided.

The County Equivalent Option may be applied to the 11 subcounty locality States independent of our proposed basic Option 1i, indeed independent of any other changes in payment localities. When adopted with our basic Option 1i, 5-percent threshold, changes are made automatically or easily in 8 of the 11 States:

- Five States—Arizona, Connecticut, Kentucky, Mississippi, and Nevada become statewide payment areas.
- California currently has eight subcounty areas, all of which are in Los Angeles County. These areas have the same GAF and payment level and can be aggregated into a single FSA. (These eight localities were kept separate from 1992 to 1995 to facilitate the statutory fee schedule transition period.)
- In New York, existing subcounty areas are included in the residual rest-of-State area.
- In Oregon, the current town-based "Portland" locality, which includes parts of Clackamas, Multnomah, and Washington counties, can be redefined to encompass the boundaries of these three counties.

Because of their unique circumstances, we believe the remaining three subcounty FSA States of Massachusetts, Missouri, and Pennsylvania require simple fundamental payment area reconfigurations.

Massachusetts—Massachusetts currently has two noncontiguous payment areas: "Urban" and "Suburban." Under Option 1i, 5–Percent Threshold, Massachusetts would become a single statewide locality. The shortcoming of both the current localities and Option 1i, 5–Percent Threshold, is that the high cost Boston area, comprised of parts of Suffolk, Norfolk, and Middlesex counties, is not separated from lower-cost central and western Massachusetts. The problem is caused by the composition of the current "Urban Massachusetts" locality, which groups the Worcester, Springfield, and Pittsfield areas with the substantially higher-cost Boston area. We, therefore, propose to change Massachusetts to two new localities: 01—Boston Metropolitan Area (comprised of Suffolk, Norfolk, and Middlesex counties) and 02—rest of Massachusetts.

Missouri—Missouri currently has seven noncontiguous payment areas: Northern Kansas City; Kansas City; St. Louis/large East Cities; St Joseph; Rural Northwest counties; small East Cities; and rest of Missouri. Under our proposed Option 1i, 5–Percent Threshold, Missouri would become a statewide payment area. This result would fail to recognize the significant price differences between the Kansas City and St. Louis metropolitan areas and the rest of the State and would result in significant payment area input price difference tracking inaccuracies. To correct this problem, we propose to change Missouri to three payment areas: 01—Kansas City Metropolitan Area (Platte, Clay, and Jackson counties); 02—St Louis Metropolitan Area (St Louis City, St. Louis, Jefferson, and St Charles counties); and 03—rest of Missouri (all other counties).

Pennsylvania—Pennsylvania currently has four noncontiguous payment localities: 01—Philadelphia/Pittsburgh medical schools; 02—large Pennsylvania Cities; 03—smaller Pennsylvania Cities; and 04—rest of Pennsylvania. Under proposed Option 1i, 5–Percent Threshold, areas 03 and 04 are combined into a residual rest-of-State area. The problem is that the high cost Philadelphia area is split into two areas, parts of 01 and 02, and is not clearly distinguished from the lower-cost Pittsburgh area and the rest of area 02. The five counties comprising the Philadelphia MSA are the most costly in Pennsylvania and clearly belong together in a "Philadelphia Metropolitan Area" locality. Allegheny County, which contains Pittsburgh and, therefore, part of which is grouped with part of Philadelphia in locality 01, is much less expensive than the Philadelphia area and does not belong in the same locality, either cost-wise or geographically. Thus, we propose that Pennsylvania be divided into two localities: 01—Philadelphia Metropolitan Area (Montgomery, Philadelphia, Delaware, Bucks, and Chester counties); and 02—rest of Pennsylvania (all other counties).

c. Effects of Proposed Option 1i, 5–Percent Threshold, with Subcounty FSA Restructuring

We believe that our proposed restructuring of Medicare payment areas meets the major goal of simplifying payment areas and reducing payment differences among adjacent geographic areas while maintaining accuracy in tracking input prices among areas. It significantly reduces the number of FSAs from 210 to 89, and increases the number of statewide payment areas from 22 to 34, thereby simplifying program administration. It also provides a more rational and understandable basis for localities, reduces urban/rural payment differences, and maintains separate payment areas for relatively high-priced large and mid-sized cities in large States. It decreases the number of payment areas by almost 60 percent, while at the same time reducing average county boundary payment differences, yet reduces average county input price accuracy by only 0.42 percent.

The GPCIs, and, therefore, the GAFs, for the proposed new payment areas would be budget neutral within each State. That is, an adjustment would be made to them later in the year (to incorporate the most recent data into the adjustments) to yield the same total physician fee schedule payments within that State that would have been made had the payment areas not been changed. We are anticipating the adjustments to be minor. While some current individual payment areas will experience slight increases in payments and some areas will experience slight decreases in payments under our proposed FSA changes, the effects on the overwhelming majority of areas will be minimal. Of the total current areas in the 28 States currently having multiple FSAs, 82 percent change less than 3 percent, 93 percent change less than 4 percent, and 96 percent change less than 5 percent. Forty-three percent of the areas will experience increases in payments, 33 percent will experience decreases, and 24 percent will experience no change. Addendum A, "1996 Geographic Adjustment Factors (GAFs) by Medicare Payment Locality/

Locality Part for January 1, 1996 Localities and Proposed Option, Fee Schedule Areas (FSAs) in Descending Order of Difference" shows the effects for each of the current localities in multiple FSA States (as previously mentioned, the 22 States currently having a single statewide locality remain statewide localities) of our proposed locality reconfiguration by comparing existing GAFs to the GAFs for the new localities. Because our proposal eliminates subcounty areas, we are also publishing Addendum B, "Medicare Fee Schedule Areas (Localities) and 1996 Geographic Adjustment Factors (GAFs), Current and Proposed Option by State and County/County Part" that shows, alphabetically by State and county, the current locality and GAF and the proposed locality and GAF for each county.

As can be seen from Addendum A, only four areas will lose more than 4 percent under our proposal: Pennsylvania area 01, Philadelphia/Pittsburgh Medical Schools; Pennsylvania area 02, large Pennsylvania Cities; Missouri area 01, St. Louis/large Eastern Cities; and Massachusetts area 01, Urban Massachusetts. These are unique situations and require explanation. As the asterisks on these areas indicate, these losing areas are only part of an existing locality and are in States in which we are recommending fundamental restructuring of FSAs because of existing subcounty FSAs and the current combining of areas with widely different input prices into a single area. In actuality, only part of the existing area will lose. As Addendum A shows, the remaining part of the area will win under our proposal. For example, the largest projected loser, Pennsylvania area 01, is in reality only the part of Pittsburgh that is currently included in area 01. The Philadelphia portion of Pennsylvania area 01 is a projected winner under our proposal. As mentioned earlier, while Pittsburgh is in Allegheny County, which has considerably lower input prices than the Philadelphia area, part of Pittsburgh is included with part of Philadelphia in area 01. This has the effect of overpaying the Pittsburgh part of area 01 and underpaying the Philadelphia part of area 01. Our proposal remedies this situation by grouping Philadelphia with similar priced counties in the Philadelphia MSA, while grouping Pittsburgh with similar priced areas in the rest of Pennsylvania. This also explains why Pennsylvania area 02 shows up as both one of the four largest losers and as the largest winner. Under our proposal, the part of area 02 comprised of larger cities outside of the Philadelphia MSA is no longer included with the higher priced counties in the Philadelphia MSA, but is included in the residual Pennsylvania FSA. This lowers their GAFs, while increasing the GAFs of the higher priced counties in the Philadelphia MSA that now become part of the Philadelphia FSA.

The same logic holds true for Massachusetts and Missouri. The losing parts of current Massachusetts locality 01 are the Worcester, Springfield, and Pittsfield areas which, while having substantially lower costs than Boston, are currently included in the same locality. The winning part of Massachusetts locality 01 is the higher-cost Boston metropolitan area. In Missouri, the losing parts of locality 01, St. Louis/large East Cities, are the lower-cost Columbia, Springfield, and Jefferson City areas that are currently included with higher-cost St. Louis. The winning part of this locality is the St. Louis metropolitan area. These four largest losing areas then result from our correcting the current anomalous situation created by including low-cost and high-cost areas in a single locality by reconfiguring the localities to more accurately reflect input price variations.

We welcome comments on our proposed payment area changes. Our proposal is based on the application of statistical criteria to aggregate localities within a State that are not significantly different as indicated by current GAFs. We would welcome alternative rationale and criteria for exceptions to this statistically based methodology. While we are open to considering exceptions to this statistically based realignment, commenters suggesting variations on our proposal should submit an analysis of why their variation is preferable. For example, commenters suggesting that their particular area, which would become part of a residual rest-of-state area under our proposal, should be retained as a separate payment area should submit data to show that their area costs exceed the costs of the other areas in the residual payment area by the 5-percent threshold.

As mentioned earlier, the great majority of existing FSAs would experience only very minor changes in payment levels under the proposed new payment area configuration. We are concerned, however, about the few areas estimated to experience the largest reductions in payments. To lessen the impact on these areas, we propose phasing in the effect of the proposed new payment areas over a 2-year period in States containing a locality that is estimated to experience a decrease in payments that exceeds a certain threshold. We selected a 2-year period because when we implement the GPCI revisions required by law every 3 years, the law provides for a 2-year transition period. Revising localities requires calculating GPCIs to correspond to the revised localities.

A transition period, however, adds another element to the changes to the physician fee schedule. For example, the law requires that the conversion factor be updated each year. In addition, we annually add new RVUs for new and revised services. In 1997, we will implement the comprehensive changes in work RVUs required by law. In 1998, the law requires us to implement new resource-based practice expense RVUs. In 1998 and 1999, we will implement new GPCIs as required by law. A transition period for our locality changes would add one more payment change to these other changes. Since most payment areas would experience very minor changes, we believe that transitioning these areas would unnecessarily add another change.

Since the purpose of the proposed phase-in is to limit the effect on the areas estimated to experience the largest decrease in payments because of our proposed payment area revisions, we propose that no area be allowed to lose more than 4 percent in the first year. We selected the 4-percent threshold because that is about one-half of the largest estimated area payment decrease. The proposed payment area changes would be fully effective in 1997 in all States not containing an area whose payments are estimated to decrease by more than 4 percent under our proposal. Under this phase-in, only two States, Pennsylvania and Missouri, would be transitioned as they are the only States with areas that would experience a decrease of more than 4 percent. In these States, areas estimated to lose more than 4 percent would be assigned 1997 GPCIs whose values would limit the loss to 4 percent. Since the proposed new payment area changes would be budget-neutral within a State, all areas within a State would be subject to the 2-year phase-in if the State contained an area whose payment level is estimated to decrease by more than 4 percent. This means that areas estimated to receive increases in payments in these States would receive only part of the increase in 1997 as transitional 1997 GPCIs would be calculated to maintain budget neutrality within the State. In 1998, all areas in these transitioned States would be totally incorporated into their new localities and be assigned the fully implemented new locality GPCIs. We have designed this transition approach

to cushion the effect of the change for the localities that would be experiencing the greatest losses. We invite comments on this transition proposal and are open to suggestions about alternative transition approaches.

Our proposal would leave 16 States with multiple payment areas. We believe our proposal justifies multiple areas in these States because of input price differences within these States. However, as stated earlier in the background discussion on this issue, we are generally in favor of statewide payment areas as they simplify program administration and encourage physicians to practice in rural areas by eliminating urban/rural payment differentials within the State. Therefore, to continue to be responsive to the physician community, even if our proposed payment area reconfiguration is adopted, we will continue to consider converting any of the remaining multiple payment area States into a single statewide payment area if overwhelming support among physicians in both winning and losing areas can be demonstrated. This proposed policy change does not require a change to the regulations set forth in § 414.4 ("Fee schedule areas").

B. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

1. Background

The payment for diagnostic procedures, including diagnostic radiologic procedures, under the Medicare program is made under two statutory benefits. Section 1861(s)(1) of the Act describes physician services as part of the medical and other health services benefit. This paragraph describes the professional component of a diagnostic test, which is the interpretation of the test. Under the physician fee schedule and the Medicare carrier payment systems, these services are coded with the CPT modifier "26."

Payment for taking a test is made under section 1861(s)(3) of the Act. We have termed the taking of a test the technical component of the test, and it is indicated under the physician fee schedule with the "TC" modifier.

Section 2070.1 of the Medicare Carriers Manual provides that for a diagnostic test to be covered, the service must be related to a patient's illness or injury (or symptom or complaint) and ordered by a physician. This instruction was intended to relate a diagnostic test to a patient's illness or injury, symptom, or complaint. The results of the test were to be used to treat the patient or refer him or her for treatment. It has come to our attention from various sources, including carrier medical directors, that, in some cases, the intent of this instruction has been frustrated. We have heard of instances in which a physician is employed for the sole purpose of ordering tests. This physician has no relationship to the beneficiary, and it is highly likely that tests by this physician would not be medically necessary. We believe this practice generates unnecessary diagnostic tests and places Medicare beneficiaries at needless risk both medically and financially. We propose to further clarify this long-standing manual instruction requirement that tests be ordered by a physician by specifying that the physician ordering the test must be the physician treating the patient. This proposed policy would link the ordering of the diagnostic test to the physician who will use the test results to treat the patient.

2. Proposal

We propose that for diagnostic tests, including diagnostic radiologic procedures, to be covered, they must be ordered by the physician who treats the beneficiary. The physician who treats the beneficiary is the physician responsible for the treatment of the patient and who orders the test or radiologic procedure to use the results in the management of the beneficiary's specific medical problem(s). (Physicians can order tests while they are consulting for another physician.) We believe this requirement is fundamental for coverage and payment of diagnostic tests and, therefore, are including it in the regulations at § 410.32 ("Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions").

3. Chiropractor Exception

A physician who orders the x-ray that is used by a chiropractor to demonstrate the subluxation of the spine in a beneficiary who is receiving manual manipulation treatments would be exempted from this rule. Because no payment can be made for a diagnostic test ordered by a chiropractor under § 410.22(b)(2), we propose to allow payment for the x-ray when ordered by a physician who will not be treating the patient for subluxation of the spine. Otherwise, beneficiaries would always have to pay out-of-pocket for these x-rays, which would frustrate their use of the chiropractic benefit.

4. Non-Physician Practitioners

Certain non-physician practitioners who provide services that would be physician services if furnished by a physician under a specific enumerated benefit in the statute would be considered as the physician treating the beneficiary for the purpose of this section. Non-physician practitioners who meet this definition are physician assistants (section 1861(s)(2)(K)(i) of the Act); and nurse practitioners and clinical nurse specialists (sections 1861(s)(2)(K)(ii) and 1861(s)(2)(K)(iii) of the Act), operating within the scope of their State licenses.

C. Transportation in Connection with Furnishing Diagnostic Tests

Section 1861(s)(3) of the Act establishes coverage for diagnostic x-rays furnished in a place of residence used as the patient's home if the performance of the tests meets health and safety conditions established by the Secretary. This provision is the basis for payment of x-ray services furnished by approved portable suppliers to beneficiaries in their homes and in nursing facilities.

Although the Congress did not explicitly so state, we determined that, because of the increased costs in transporting the x-ray equipment to the beneficiary, the Congress intended that we pay an additional amount for transportation expenses. Therefore, we established HCFA Common Procedure Coding System (HCPCS) codes R0070 and R0075 (for single-patient and multiple-patient trips, respectively) to pay approved portable x-ray suppliers a transportation "component" when they furnish the services listed in section 2070.4.C of the Medicare Carriers Manual.

We later added the taking of an electrocardiogram (EKG) tracing to the list of services approved suppliers of portable x-ray services may furnish (section 2070.4.F of the Medicare Carriers Manual) and established HCPCS code R0076 to pay for the transportation of EKG equipment. In the December 1995 final rule (60 FR 63149), we published our revised policy of precluding separate payment for the transportation of diagnostic equipment except under certain circumstances. These circumstances include standard EKG procedures furnished by an approved supplier of portable x-ray services or by an independent physiological laboratory (section 2070.1.G of the Medicare Carriers Manual) under HCPCS code R0076 in connection with the provision of CPT codes 93000 (Electrocardiogram, complete) or 93005 (Electrocardiogram, tracing).

After further review of this policy, we have decided that the exceptions are inconsistent with the law and legislative

history regarding the payment for transportation of EKG equipment. Section 1861(s)(3) discusses only the coverage of x-rays furnished in a beneficiary's place of residence. Because there is no mention in the statute about the coverage of EKGs furnished in a beneficiary's place of residence, we are returning to our original interpretation of the law.

We propose allowing separate payment only for the transportation of x-ray equipment furnished by approved suppliers of portable x-ray services. As a result, we would not allow separate payment for the transportation of EKG equipment furnished by any supplier. Therefore, we propose to eliminate HCPCS code R0076. Payment for CPT codes 93000 and 93005 will not change, nor will the coverage of these services change. This proposed policy change is not explicitly addressed in our regulations.

D. Bundled Services

1. Hot or Cold Packs

The application of hot or cold packs to one or more areas is billed using CPT code 97010. These modalities (that is, physical agents applied to produce therapeutic change to biologic tissue) are primarily used in conjunction with therapeutic procedures to provide analgesia, relieve muscle spasm, or reduce inflammation and edema. Generally, hot packs are used for subacute or chronic conditions, while cold packs are used for acute and chronic conditions.

The results of a comprehensive analysis of Medicare claims data indicate that CPT code 97010 is being used extensively with a wide variety of services such as office visits and physical medicine and rehabilitative services. Therefore, we are proposing to bundle payment for CPT code 97010 into the payment for all other services including, but not limited to, those with which it historically has been billed with the greatest frequency (such as office visits and physical therapy).

We believe that our proposal to bundle payment and, thus, to preclude separate payment for the application of hot and cold packs is justified for three reasons:

- As a therapy, hot and cold packs are easily self-administered. Generally, we do not cover procedures that are basically self-administered; hot and cold packs, by their nature, do not require the level of professional involvement as do the other physical medicine and rehabilitation modalities.
- Although we acknowledge that professional judgment is involved in the use of hot and cold packs, much less judgment is demanded for them than for other modalities. These packs are commonly used in the home, and, thus, require a minimal level of professional attention.
- The application of hot and cold packs is usually a precursor to other interventions and, as such, is appropriately used in combination with other procedures. Our data analysis supports this conclusion because the majority of claims for CPT code 97010 occurred in conjunction with claims for other services performed on the same day.

We propose to change the status indicator for CPT code 97010 to "B" to indicate that the service is covered under Medicare but payment for it is bundled into the payment for other services. Separate payment for CPT code 97010 would not be permitted under this proposed change. This change would be implemented in a budget neutral manner across all other procedures. Because the RVUs for this procedure would be redistributed across all physician fee schedule services, there would be no measurable impact. This proposed policy change is not explicitly addressed in our regulations.

2. Dermatology Procedures

a. Bundling of Repair Codes into Excision Codes

Currently, the RVUs for the dermatology excision codes (CPT codes 11400 through 11446 and 11600 through 11646) include services described by the simple repair codes (CPT codes 12001 through 12018). The dermatologist can bill separately for the intermediate or complex repair (closure) codes (CPT codes 12031 through 12057 and 13100 through 13152, respectively) in addition to the excision codes. We do not allow separate billing for closure for any other surgical procedure. The closure is included in the comprehensive procedure. We believe that applying the same standard to dermatologists is appropriate.

Therefore, we propose to cease paying separately for the repair codes when billed in conjunction with the excision codes. We are proposing to bundle the RVUs for the intermediate and complex repair codes (CPT codes 12031 through 12057 and CPT codes 13100 through 13152, respectively) into both the benign and malignant skin lesion excision codes (CPT codes 11400 through 11446 and 11600 through 11646, respectively). Under our proposal, we would redistribute the RVUs for the repair codes across CPT codes 11400 through 11446 and 11600 through 11646. We would base the number of RVUs for redistribution on the frequency with which the repair codes are billed with the excision codes.

We are not proposing to assign these repair codes a "B" status indicator because we acknowledge that these codes are not used exclusively with excision services. Instead, we would implement this proposed policy change through our correct coding initiative. This proposed change would standardize our policy for payment for wound closure. This proposed policy change is not explicitly addressed in our regulations.

b. Skin Lesion Destruction Codes

There are several CPT codes that describe the destruction of various benign or premalignant lesions. Within this group of codes, the reporting methods vary. Sometimes the code describes the destruction of a single lesion but requires reporting multiple codes for the destruction of several lesions; other times it describes destruction of as many as 15 lesions. Thus, it is sometimes not clear how many codes to report. The codes are specific to particular areas of the body or particular types of lesions. Because these categories are not mutually exclusive, the coding system provides the opportunity to report the destruction of a given lesion in more than one way. Finally, this complicated coding structure has produced anomalies in work relative values. We propose to simplify the reporting of and payment for the destruction of benign or premalignant skin lesions.

We propose to assign a "G" status indicator to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 to indicate that these CPT codes are not valid for Medicare purposes and that there is another code to use for the reporting of and payment for these services.

To report the destruction of benign and premalignant skin lesions, we propose to create two HCPCS codes. The first code would describe the destruction of up to and including 15 lesions. The second code would describe destruction of each additional 10 lesions. To assign RVUs to these codes, we propose to take a weighted average of the RVUs assigned to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 based on the billing frequencies and the code descriptors. This proposed policy change is not explicitly addressed in our regulations.

E. Change in Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

CPT code 94150 (Vital capacity, total) is a screening measure. It is typically performed on patients who are asymptomatic. Because these tests are performed on patients who do not have symptoms of breathing problems, they represent preventive services that are, by statute, not covered by Medicare. Some Medicare carriers do not cover this code at present. However, we inadvertently failed to identify CPT code 94150 as noncovered by Medicare on a national basis. Therefore, we propose changing the status indicator for CPT code 94150 from "A" to "N" to represent its noncovered status. This policy change is not specifically addressed in our regulations. It would be reflected in the Medicare physician fee schedule database and in Addendum B (Relative Value Units and Related Information) of the physician fee schedule final rule, which will be published later this year.

2. Certain Cardiovascular Procedures

In the absence of a national Medicare policy on the following CPT codes, we currently allow our Medicare carriers discretion in deciding whether to allow coverage for these procedures:

CPT code	Descriptor
93201	Phonocardiogram with or without ECG lead; with supervision during recording with interpretation and report (when equipment is supplied by the physician).
93202	Phonocardiogram * * *; tracing only, without interpretation and report (eg, when equipment is supplied by the hospital, clinic).
93204	Phonocardiogram * * *; interpretation and report.
93205	Phonocardiogram with ECG lead, with indirect carotid artery and/or jugular vein tracing, and/or apex cardiogram; with interpretation and report).
93208	Phonocardiogram * * *; tracing only, without interpretation and report.
93209	Phonocardiogram * * *; interpretation and report only.
93210	Phonocardiogram intracardiac.
93220	Vectorcardiogram (VCG), with or without ECG; with interpretation and report.
93221	Vectorcardiogram * * *; tracing only, without interpretation and report.
93222	Vectorcardiogram * * *; interpretation and report only.

As a result of our request for comments on the 5-year review of physician work RVUs in the December 1994 final rule (59 FR 63453), the American College of Cardiology commented that these 10 phonocardiography and vectorcardiography diagnostic tests are outmoded and of little clinical value. Our review of Medicare claims data for these tests supports this contention because the volume of claims for these tests has declined significantly in recent years. Only 17,925 claims were submitted in calendar year 1994 for all 10 tests.

Based on the American College of Cardiology's recommendation, our review of our recent claims history, and our consultation with other medical specialty groups, we propose to discontinue coverage for these 10 diagnostic tests. The status indicators for these 10 procedures would be changed from "A" to "N" to reflect their noncovered status. This proposed policy change is not explicitly addressed in our regulations.

F. Payments for Supervising Physicians in Teaching Settings

1. Definition of Approved Graduate Medical Education Programs

Since publication of the December 1995 final rule, we have received questions about the difference in the definition of an approved residency program for purposes of the teaching physician rules under § 415.152 ("Definitions") and the definition used in the direct medical education rules under § 413.86(b) ("Direct graduate medical education payments"). To be consistent, we propose to modify § 415.152 to match the definition of an approved graduate medical education program in § 413.86(b). We would add a reference to programs that are recognized as an "approved medical residency program" under § 413.86(b). By making this change, the regulations text would reflect a common definition of approved graduate medical education programs for Medicare Part A and Part B. This is a technical change and would have no effect on the implementation of our revised policy regarding the payment for supervising physicians in teaching settings that is effective July 1, 1996.

2. Evaluation and Management Services Furnished in Certain Settings

In the December 1995 final rule (60 FR 63135), we revised our policy regarding the payment for supervising physicians in teaching settings. We eliminated the attending physician criteria but clarified the physician presence requirement for services billed to the Medicare carrier. As part of our revised policy, we created a limited exception for residency programs that are fundamentally incompatible with a physical presence requirement. The exception to the physician presence requirement is for certain evaluation and management services (CPT codes 99201, 99202, 99203, 99211, 99212, and 99213) furnished in certain ambulatory care centers within the context of certain types of residency training programs. The exception is set forth in § 415.174 ("Exception: Evaluation and management services furnished in certain centers").

As the exception currently reads, one of the criteria is that "The range of services furnished by residents in the center includes * * * Comprehensive care not limited by organ system, diagnosis, or gender." (§ 415.174(a)(4)(iii)). It has come to our attention that many obstetric and gynecological residency programs have been restructured over the years to have a greater primary care focus. Some of these programs that otherwise qualify for an exception might be denied payment if the gender limitation were strictly applied.

Contrary to suggestions in correspondence we received after publication of the final rule, it was not our intention to prevent obstetric and gynecological residency programs or other residency programs focusing on women's health care from qualifying for the exception solely because of the patient's gender. Thus, we propose to make a technical change to the regulations text to delete the reference to gender in § 415.174(a)(4)(iii) and change the text to "Comprehensive care not limited by organ system or diagnosis." Of course, such programs must satisfy the otherwise applicable criteria to qualify for an exception.

G. Change in Global Periods for Four Percutaneous Biliary Procedures

The Society of Cardiovascular and Interventional Radiology advised us that a 90-day global period is inappropriate for four percutaneous biliary procedures. The four procedures are CPT codes 47490 (percutaneous cholecystectomy), 47510 (introduction of percutaneous transhepatic catheter for biliary drainage), 47511 (introduction of percutaneous transhepatic stent for internal and external biliary drainage), and 47630 (biliary duct stone extraction, percutaneous via T-tube tract, basket, or snare (for example, Burhenne technique)). The Society believes that these four procedures should have a "0-day" global period. We agree with the Society's arguments that a 90-day global period is contrary to the widespread practice conventions of percutaneous biliary intervention and is inconsistent with other similar interventions in the biliary tract and urinary tract.

We believe that the global periods for these four codes should be changed. Therefore, we are proposing to change the global periods for these services from 90 days to 0 days. To make this change, we would reduce the work RVUs assigned to these procedures to reflect the lack of postsurgical work in the shortened global period. We propose to reduce the work RVUs for CPT codes 47490, 47510, 47511, and 47630 by 17 percent if we change the global periods. The 17 percent figure was taken from the original data developed by the Harvard School of Public Health Resource-Based Relative Value Study as the measure of the postsurgical work associated with these codes. This proposed policy change is not explicitly addressed in our regulations.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

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

V. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all physicians are considered to be small entities.

We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the proposed RVUs.

This proposed rule is expected to have varying effects on the distribution of Medicare physician payments and services. With few exceptions, we expect that the impact would be limited. Although the proposed rule would not have a significant economic impact on a substantial number of small entities, we are preparing a voluntary regulatory flexibility analysis.

Section 1848(c)(2)(B) of the Act requires that adjustments in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. If this threshold is exceeded, we would make adjustments to the conversion factors to preserve budget neutrality. The proposals discussed in sections B through H below would have no impact on total Medicare expenditures because the effects of these changes would be neutralized in the calculation of the conversion factors for 1997.

B. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

As mentioned earlier, our proposal would reduce existing urban/rural payment differences. Overall, urban areas would experience an average decrease in payments of –0.14 percent, while rural areas will experience an increase in payments of 1 percent. We analyzed the effects of these changes on physicians by specialty. The changes are quite small and follow the expected pattern. We estimate that overall, physicians in family practice and general practice will experience modest increases of about 0.3 percent in payments, while most medical and surgical specialties will experience negligible decreases of about –0.1 to –0.2 percent. This pattern results from the tendency of specialists to be disproportionately concentrated in urban areas, which are estimated to experience a slight decrease in payments under our proposal.

The impact on beneficiaries is likewise minor. We examined the impact by beneficiary age, gender, race, and income level. Roughly 20 percent of beneficiaries reside in areas in which payments decrease by less than 5 percent, roughly 50 percent live in areas that experience no change in payments, roughly 25 percent live in areas where payments will increase by less than 5 percent, and about 2 percent live in areas where payments would rise by 5 to 10 percent.

The distribution of beneficiaries by age and gender and of Caucasian beneficiaries are nearly identical to this overall distribution. Minority beneficiaries are more heavily concentrated in areas that experience no change in payments; a lower proportion of minority beneficiaries live in both areas experiencing a loss and areas experiencing a gain than do Caucasian beneficiaries. For example, 14.4 percent of minority beneficiaries live in an area experiencing a loss compared to 21 percent of all beneficiaries who live in these areas. Beneficiaries living below poverty level are less likely than all beneficiaries to be living in an area experiencing a payment decrease under our proposal, 16 percent compared to 21 percent. It does not appear that vulnerable Medicare groups—minorities, the very old, or the poor—would suffer decreases in access resulting from our proposal.

C. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

Our proposal would require that, to be covered under Medicare, diagnostic tests, including diagnostic radiologic procedures, must be ordered by the physician who treats a beneficiary or furnishes a consultation to the physician who treats the beneficiary. We would allow an exception for x-rays that demonstrate subluxation of the spine that are ordered for a chiropractor. Under § 410.22(b)(2), no payment can be made to a chiropractor who orders diagnostic tests. We propose to allow payment for these x-rays when ordered by a physician who will not be treating the patient for subluxation of the spine.

Non-physician practitioners functioning within the specific benefit would be considered the physician treating the beneficiary for the purpose of the proposal. Putting this requirement in regulations (§ 410.31 "Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions") would codify our current manual instruction. This proposed policy may result in some program savings due to the denial of payment for tests that may not be medically necessary because they were ordered by a physician who was not treating the beneficiary. However, we do not have sufficient data to furnish any reliable estimates of savings.

D. Transportation in Connection with Furnishing Diagnostic Tests

We propose to eliminate payment for the transportation of EKG equipment (HCPCS code R0076) by all billers. In 1994, the last year for which we have complete data, we allowed 260,686 services and paid $9,192,434. Therefore, were it not for our budget-neutrality adjustment, we estimate that this proposal would result in approximately a $9.2 million reduction in Medicare payments.

E. Bundled Services

1. Hot or Cold Packs

We propose to change the status indicator for CPT code 97010 (Application of a modality to one or more areas; hot or cold packs) to "B" to indicate that the service is covered under Medicare but payment for it is bundled into payment for other services. Separate payment for CPT code 97010 will not be permitted under this proposed change. The annual expenditures for CPT code 97010 under our current policy are approximately $41.2 million. Because the RVUs for this procedure will be redistributed across all physician fee schedule services in a budget neutral manner, there will be no measurable impact from this proposal.

2. Dermatology Procedures

a. Bundling of Repair Codes into Excision Codes We propose to cease paying separately for CPT codes 12031 through 12057 and 13100 through 13152 (intermediate and complex repair codes, respectively) if these codes are billed in conjunction with CPT codes 11400 through 11446 and 11600 through 11646 (dermatology excision codes for benign and malignant lesions, respectively). Because we would redistribute the RVUs for the repair codes across the excision codes, there would be little budgetary effect from this proposal.

b. Skin Lesion Destruction Codes

We propose to change the way Medicare pays for the destruction of benign or premalignant skin lesions. Currently there are several CPT codes that describe a variety of ways of reporting the destruction of skin lesions. We propose to assign a "G" status code to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 and create two HCPCS codes to report the destruction of skin lesions. Because we will use a weighted average of the current RVUs assigned to the CPT codes that describe the destruction of benign or premalignant skin lesions in valuing the two proposed codes, this proposal would have no significant impact on Medicare expenditures.

F. Change of Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

We propose changing the coverage status for vital capacity tests (CPT code 94150) from "active" to "noncovered." These vital capacity tests are screening services. With limited exceptions, section 1862(a)(1)(A) of the Act precludes Medicare coverage for screening procedures. This code is infrequently billed; in 1994 only 101,150 services were paid for CPT code 94150 for a total Medicare expenditure of $1,077,600. We do not believe that the change in coverage status would have a significant impact on Medicare expenditures. We would also budget neutralize the $1 million across all fee schedule services.

2. Certain Cardiovascular Procedures

We propose changing the coverage status for certain cardiovascular procedures (CPT codes 93201, 93202, 93204, 93205, 93208, 93209, 93210, 93220, 93221, and 93222) to noncovered. Because there has been a decline in the billing of these services in recent years and in 1994, we only allowed a total of 17,925 services with $690,326 in allowed charges for all 10 diagnostic tests, we do not believe that the change in coverage status would have a significant impact on Medicare expenditures.

G. Payments for Supervising Physicians in Teaching Settings

This proposed rule would make a technical change to § 415.152 ("Definitions") to make the definition of an approved graduate medical education program consistent with the definition in § 413.86(b) ("Direct graduate medical education payments"). Because this is only a technical change to standardize almost identical definitions, it would have no budgetary impact on Medicare expenditures.

We propose a technical change to remove the word "gender" from § 415.174(a)(4)(iii) ("Exception: Evaluation and management services furnished in certain centers"). We did not include the reference to gender with the intention of excluding obstetric and gynecological or other women's care residency programs solely because of patient gender. This technical change would make clear that the exception criteria would not be applied in such a manner. Because this technical change merely clarifies our intent with respect to a policy that has not yet been implemented, there would be no budgetary effect.

H. Change in Global Period for Four Percutaneous Biliary Procedures

To implement our proposal to change the global periods for four percutaneous biliary procedures (CPT codes 47490, 47510, 47511, and 47630) from 90 days to 0 days, we are proposing to reduce the work RVUs for these procedures by 17 percent. These work RVUs will be redistributed across all services; therefore, there is no significant impact.

I. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would

make no change in payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. In § 410.32 paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) *Ordering diagnostic tests.* All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who treats the beneficiary, that is, the physician who is actively furnishing a consultation or treating a beneficiary for a specific medical problem(s) and uses the results in the management of the beneficiary's specific medical problem(s). Physicians who order the x-ray used by a chiropractor to demonstrate the subluxation of the spine in a beneficiary who is receiving manual manipulation treatments are exempted from this requirement. Non-physician practitioners (physician assistants, nurse practitioners, and clinical nurse specialists) who provide services that would be physician services if furnished by a physician and who are operating within the scope of their statutory benefit are considered the physician treating the beneficiary for the purpose of this section.

* * * * *

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

B. Part 415 is amended as set forth below:

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 415.152 the introductory text is republished, and the definition of "approved graduate medical education (GME) program" is revised to read as follows:

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means one of the following:

(1) A residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

(2) A program otherwise recognized as an "approved medical residency program" under § 413.86(b) of this chapter.

* * * * *

§ 415.174 [Amended]

3. In § 415.174, in paragraph (a)(4)(iii), the phrase "system, diagnosis, or gender" is removed, and the phrase "system or diagnosis" is added in its place.

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

Dated: June 21, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 21, 1996.

Donna E. Shalala,

Secretary.

BILLING CODE 4120-01-P

ADDENDUM A

1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs) BY MEDICARE PAYMENT LOCALITY/LOCALITY PART FOR JANUARY 1, 1996 LOCALITIES AND PROPOSED OPTION, FEE SCHEDULE AREAS (FSAs) IN DESCENDING ORDER OF DIFFERENCE
(Includes only multi-locality states)

Carrier Number	Locality Number	January 1, 1996 Locality (* indicates locality part)	Proposed Option	GAF		Percentage Point Difference	Percent Difference
				Proposed Option	Jan 1, 1996 Localities		
865	02	* LG PA CITIES	PHILADELPHIA, PA	1.066	1.001	0.065	6.5 %
700	02	* MASS SUBURBS/RURAL CITIES	BOSTON, MA	1.108	1.048	0.060	5.7
1360	99	* REST OF OREGON	PORTLAND, OR	0.981	0.924	0.057	6.2
542	02	NE RURAL, CA	REST OF CALIFORNIA	1.007	0.952	0.055	5.8
542	13	KINGS/TULARE, CA	REST OF CALIFORNIA	1.007	0.955	0.052	5.4
951	13	CENTRAL WI	WISCONSIN	0.968	0.924	0.044	4.8
951	14	SOUTHWEST WI	WISCONSIN	0.968	0.924	0.044	4.8
951	12	NORTHWEST WI	WISCONSIN	0.968	0.925	0.043	4.6
621	13	SOUTHEAST IL	REST OF ILLINOIS	0.924	0.882	0.042	4.8
621	07	QUINCY, IL	REST OF ILLINOIS	0.924	0.886	0.038	4.3
542	11	FRESNO/MADERA, CA	REST OF CALIFORNIA	1.007	0.971	0.036	3.7
951	36	WAUSAU (N CNTRL), WI	WISCONSIN	0.968	0.932	0.036	3.9
621	14	SOUTHERN IL	REST OF ILLINOIS	0.924	0.889	0.035	3.9
10230	04	EASTERN CT	CONNECTICUT	1.108	1.072	0.034	3.2
10490	04	REST OF VA	VIRGINIA	0.944	0.912	0.032	3.5
900	04	WESTERN TX	REST OF TEXAS	0.924	0.893	0.031	3.5
1030	07	PRESCOTT, AZ	ARIZONA	0.995	0.964	0.031	3.2
510	08	REST OF AL	ALABAMA	0.932	0.902	0.030	3.3
1290	03	ELKO & ELY (CITIES), NV	NEVADA	1.010	0.980	0.030	3.1
542	10	MERCED/SURR.CNTYS, CA	REST OF CALIFORNIA	1.007	0.977	0.030	3.1
621	01	NORTHWEST, IL	REST OF ILLINOIS	0.924	0.896	0.028	3.1
660	03	REST OF KENTUCKY	KENTUCKY	0.921	0.895	0.026	2.9
865	01	* PHILLY/PITT MED SCHLS/HOSPS, PA	PHILADELPHIA, PA	1.066	1.041	0.025	2.4
951	19	LA CROSSE (W CNTRL), WI	WISCONSIN	0.968	0.943	0.025	2.7
10490	03	SM TOWN/INDUSTRIAL VA	VIRGINIA	0.944	0.920	0.024	2.8
630	03	REST OF IN	INDIANA	0.925	0.901	0.024	2.7
700	01	* URBAN MASS	BOSTON, MA	1.108	1.084	0.024	2.2
900	30	SAN ANGELO, TX	REST OF TEXAS	0.924	0.900	0.024	2.7
951	54	JANESVILLE (S CNTRL), WI	WISCONSIN	0.968	0.946	0.022	2.3
951	60	OSHKOSH (E CNTRL), WI	WISCONSIN	0.968	0.946	0.022	2.3
1030	05	FLAGSTAFF, AZ	ARIZONA	0.995	0.973	0.022	2.3
16510	20	SOUTHERN VALLEY, WV	WEST VIRGINIA	0.919	0.898	0.021	2.3
865	04	REST OF PA	REST OF PENNSYLVANIA	0.951	0.930	0.021	2.3
900	19	MC ALLEN, TX	REST OF TEXAS	0.924	0.904	0.020	2.2
900	10	BROWNSVILLE, TX	REST OF TEXAS	0.924	0.905	0.019	2.1
1030	08	YUMA, AZ	ARIZONA	0.995	0.976	0.019	1.9
900	34	WICHITA FALLS, TX	REST OF TEXAS	0.924	0.906	0.018	2.0
1040	04	REST OF GA	REST OF GEORGIA	0.935	0.917	0.018	2.0
900	33	LAREDO, TX	REST OF TEXAS	0.924	0.907	0.017	1.9
951	40	GREEN BAY (NORTHEAST), WI	WISCONSIN	0.968	0.951	0.017	1.8
860	03	SOUTHERN NJ	REST OF NEW JERSEY	1.051	1.035	0.016	1.5
10250	01	REST OF MISSISSIPPI	MISSISSIPPI	0.899	0.883	0.016	1.8
11260	01	* ST. LOUIS/LG E. CITIES, MO	ST. LOUIS, MO	0.984	0.968	0.016	1.7
560	01	REST OF FLORIDA	FLORIDA	0.984	0.969	0.015	1.5
900	29	ABILENE, TX	REST OF TEXAS	0.924	0.909	0.015	1.7
1030	02	TUCSON, AZ	ARIZONA	0.995	0.980	0.015	1.5
10230	01	NW AND N. CNTRL CT	CONNECTICUT	1.108	1.092	0.014	1.3
11260	02	SM E. CITIES, MO	REST OF MISSOURI	0.911	0.897	0.014	1.8
630	02	URBAN IN	INDIANA	0.925	0.912	0.013	1.4
660	02	SM CITIES (CITY LIMITS) KY	KENTUCKY	0.921	0.908	0.013	1.4
801	04	REST OF NEW YORK	REST OF NEW YORK	0.973	0.960	0.013	1.4
900	02	NORTHEAST RURAL TX	REST OF TEXAS	0.924	0.911	0.013	1.4
542	14	BAKERSFIELD , CA	REST OF CALIFORNIA	1.007	0.994	0.013	1.3
510	02	NORTH CENTRAL AL	ALABAMA	0.932	0.920	0.012	1.3
621	03	DE KALB, IL	REST OF ILLINOIS	0.924	0.912	0.012	1.3
1290	99	REST OF NEVADA	NEVADA	1.010	0.998	0.012	1.2
11260	03	REST OF MO	REST OF MISSOURI	0.911	0.899	0.012	1.3
528	50	REST OF LA	REST OF LOUISIANA	0.926	0.915	0.011	1.2
510	03	SOUTHEAST AL	ALABAMA	0.932	0.922	0.010	1.1
621	04	ROCK ISLAND, IL	REST OF ILLINOIS	0.924	0.914	0.010	1.1
5130	12	NORTH IDAHO	IDAHO	0.911	0.901	0.010	1.1
528	07	ALEXANDRIA, LA	REST OF LOUISIANA	0.926	0.917	0.009	1.0
900	08	TEXARKANA, TX	REST OF TEXAS	0.924	0.915	0.009	1.0
901	02	WESTERN MD	REST OF MARYLAND	0.964	0.955	0.009	0.9
1360	99	* REST OF OREGON	REST OF OREGON	0.933	0.924	0.009	1.0
16510	19	OHIO RIVER VALLEY, WV	WEST VIRGINIA	0.919	0.910	0.009	1.0
542	08	STOCKTON/SURR. CNTYS , CA	REST OF CALIFORNIA	1.007	0.998	0.009	0.9
650	01	REST OF KANSAS	KANSAS	0.945	0.936	0.009	1.0
528	05	MONROE, LA	REST OF LOUISIANA	0.926	0.918	0.008	0.9
16510	17	WHEELING, WV	WEST VIRGINIA	0.919	0.911	0.008	0.9
510	04	MOBILE, AL	ALABAMA	0.932	0.925	0.007	0.8
865	03	SM PA CITIES	REST OF PENNSYLVANIA	0.951	0.944	0.007	0.7

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Carrier Number	Locality Number	January 1, 1996 Locality (* indicates locality part)	Proposed Option	GAF		Percentage Point Difference	Percent Difference
				Proposed Option	Jan 1, 1996 Localities		
1030	99	REST OF AZ	ARIZONA	0.995	0.988	0.007	0.7
621	11	DECATUR, IL	REST OF ILLINOIS	0.924	0.918	0.006	0.7
801	01	BUFFALO/SURR. CNTYS, NY	REST OF NEW YORK	0.973	0.967	0.006	0.6
900	16	GRAYSON, TX	REST OF TEXAS	0.924	0.918	0.006	0.7
1040	03	SMALL GA CITIES 03	REST OF GEORGIA	0.935	0.929	0.006	0.6
1390	03	E CNTRL & NE WA	REST OF WASHINGTON	0.962	0.956	0.006	0.6
528	06	LAFAYETTE, LA	REST OF LOUISIANA	0.926	0.921	0.005	0.5
900	17	LONGVIEW, TX	REST OF TEXAS	0.924	0.921	0.003	0.3
900	03	SOUTHEAST RURAL TX	REST OF TEXAS	0.924	0.922	0.002	0.2
900	22	WACO, TX	REST OF TEXAS	0.924	0.923	0.001	0.1
21200	01	NORTHERN MAINE	REST OF MAINE	0.937	0.936	0.001	0.1
528	01	NEW ORLEANS, LA	NEW ORLEANS, LA	0.977	0.977	0.000	0.0
542	03	MARIN/NAPA/SOLANO, CA	MARIN/NAPA/SOLANO, CA	1.063	1.063	0.000	0.0
542	05	SAN FRANCISCO, CA	SAN FRANCISCO, CA	1.153	1.153	0.000	0.0
542	06	SAN MATEO, CA	SAN MATEO, CA	1.130	1.130	0.000	0.0
542	07	OAKLAND/BERKLEY, CA	OAKLAND/BERKLEY, CA	1.092	1.092	0.000	0.0
542	09	SANTA CLARA, CA	SANTA CLARA, CA	1.134	1.134	0.000	0.0
580	01	DC + MD/VA SUBURBS	DC + MD/VA SUBURBS	1.105	1.105	0.000	0.0
590	03	FORT LAUDERDALE, FL	FORT LAUDERDALE, FL	1.055	1.055	0.000	0.0
590	04	MIAMI, FL	MIAMI, FL	1.114	1.114	0.000	0.0
621	06	KANKAKEE, IL	REST OF ILLINOIS	0.924	0.924	0.000	0.0
621	12	EAST ST. LOUIS, IL	EAST ST. LOUIS, IL	0.974	0.974	0.000	0.0
621	15	SUBURBAN CHICAGO, IL	SUBURBAN CHICAGO, IL	1.050	1.050	0.000	0.0
621	16	CHICAGO, IL	CHICAGO, IL	1.066	1.066	0.000	0.0
623	01	DETROIT, MI	DETROIT, MI	1.137	1.137	0.000	0.0
740	02	N K.C. (CLAY/PLATTE), MO	METROPOLITAN KANSAS CITY, MO	0.983	0.983	0.000	0.0
740	03	K.C. (JACKSON CNTY), MO	METROPOLITAN KANSAS CITY, MO	0.983	0.983	0.000	0.0
803	01	MANHATTAN, NY	MANHATTAN, NY	1.225	1.225	0.000	0.0
803	02	NYC SUBURBS/LONG ISLAND, NY	NYC SUBURBS/LONG ISLAND, NY	1.170	1.170	0.000	0.0
803	03	POUGHKPSIE/N NYC SUBURBS, NY	POUGHKPSIE/N NYC SUBURBS, NY	1.050	1.050	0.000	0.0
860	01	NORTHERN NJ	NORTHERN NJ	1.109	1.109	0.000	0.0
900	09	BRAZORIA, TX	BRAZORIA, TX	1.003	1.003	0.000	0.0
900	11	DALLAS, TX	DALLAS, TX	1.006	1.006	0.000	0.0
900	15	GALVESTON, TX	GALVESTON, TX	1.001	1.001	0.000	0.0
900	18	HOUSTON, TX	HOUSTON, TX	1.034	1.034	0.000	0.0
900	20	BEAUMONT, TX	BEAUMONT, TX	0.973	0.973	0.000	0.0
900	21	LUBBOCK, TX	REST OF TEXAS	0.924	0.924	0.000	0.0
900	28	FORT WORTH, TX	FORT WORTH, TX	0.977	0.977	0.000	0.0
900	31	AUSTIN, TX	AUSTIN, TX	0.979	0.979	0.000	0.0
901	01	BALTIMORE/SURR. CNTYS, MD	BALTIMORE/SURR. CNTYS. MD	1.032	1.032	0.000	0.0
1040	01	ATLANTA, GA	ATLANTA, GA	1.011	1.011	0.000	0.0
1290	01	LAS VEGAS, ET AL. (CITIES), NV	NEVADA	1.010	1.010	0.000	0.0
1380	01	PORTLAND, ET AL. (CITIES), OR	PORTLAND, ET AL. (CITIES)	0.981	0.981	0.000	0.0
1390	02	SEATTLE (KING CNTY), WA	SEATTLE (KING CNTY), WA	1.023	1.023	0.000	0.0
2050	17	VENTURA, CA	VENTURA, CA	1.079	1.079	0.000	0.0
2050	18	LOS ANGELES (1ST OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	19	LOS ANGELES (2ND OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	20	LOS ANGELES (3RD OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	21	LOS ANGELES (4TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	22	LOS ANGELES (5TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	23	LOS ANGELES (6TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	24	LOS ANGELES (7TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	25	LOS ANGELES (8TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	26	ANAHEIM/SANTA ANA, CA	ANAHEIM/SANTA ANA, CA	1.092	1.092	0.000	0.0
14330	04	QUEENS, NY	QUEENS, NY	1.163	1.163	0.000	0.0
21200	03	SOUTHERN MAINE	SOUTHERN MAINE	0.992	0.992	0.000	0.0
623	02	MICHIGAN, NOT DETROIT	REST OF MICHIGAN	1.012	1.013	-0.001	-0.1
21200	02	CENTRAL MAINE	REST OF MAINE	0.937	0.938	-0.001	-0.1
1380	03	SALEM, ET AL. (CITIES), OR	REST OF OREGON	0.933	0.934	-0.001	-0.1
621	08	NORMAL, IL	REST OF ILLINOIS	0.924	0.926	-0.002	-0.2
740	06	RURAL NW COUNTIES, MO	REST OF MISSOURI	0.911	0.913	-0.002	-0.2
1380	02	EUGENE, ET AL. (CITIES), OR	REST OF OREGON	0.933	0.935	-0.002	-0.2
1290	02	RENO, ET AL. (CITIES), NV	NEVADA	1.010	1.013	-0.003	-0.3
621	10	CHAMPAIGN-URBANA, IL	REST OF ILLINOIS	0.924	0.927	-0.003	-0.3
900	06	TEMPLE, TX	REST OF TEXAS	0.924	0.927	-0.003	-0.3
1390	01	W & SE WA (EXCL SEATTLE)	REST OF WASHINGTON	0.962	0.965	-0.003	-0.3
5130	11	SOUTH IDAHO	IDAHO	0.911	0.914	-0.003	-0.3
590	02	N/NC FL CITIES	REST OF FLORIDA	0.984	0.988	-0.004	-0.4
900	32	VICTORIA, TX	REST OF TEXAS	0.924	0.928	-0.004	-0.4
900	26	AMARILLO, TX	REST OF TEXAS	0.924	0.930	-0.006	-0.6
510	01	NORTHWEST AL	ALABAMA	0.932	0.939	-0.007	-0.7
1030	01	PHOENIX, AZ	ARIZONA	0.995	1.002	-0.007	-0.7

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542	27	RIVERSIDE, CA	REST OF CALIFORNIA	1.007	1.014	-0.007	-0.7
700	02	* MASS SUBURBS/RURAL CITIES	REST OF MASSACHUSETTS	1.041	1.048	-0.007	-0.7
801	03	N. CENTRAL CITIES, NY	REST OF NEW YORK	0.973	0.981	-0.008	-0.8
528	02	SHREVEPORT, LA	REST OF LOUISIANA	0.926	0.935	-0.009	-1.0
740	01	ST JOSEPH, MO	REST OF MISSOURI	0.911	0.920	-0.009	-1.0
900	27	TYLER, TX	REST OF TEXAS	0.924	0.933	-0.009	-1.0
901	03	SOUTH & E. SHORE MD	REST OF MARYLAND	0.964	0.974	-0.010	-1.0
860	02	MIDDLE NJ	REST OF NEW JERSEY	1.051	1.062	-0.011	-1.0
542	01	N. COASTAL CNTYS, CA	REST OF CALIFORNIA	1.007	1.019	-0.012	-1.2
542	15	SAN BERNADINO/E.CTRL CNTYS CA	REST OF CALIFORNIA	1.007	1.019	-0.012	-1.2
900	14	EL PASO, TX	REST OF TEXAS	0.924	0.936	-0.012	-1.3
630	01	METROPOLITAN IN	INDIANA	0.925	0.938	-0.013	-1.4
1380	12	SW OR CITIES (CITY LIMITS)	REST OF OREGON	0.933	0.946	-0.013	-1.4
542	04	SACRAMENTO/SURR. CNTYS, CA	REST OF CALIFORNIA	1.007	1.020	-0.013	-1.3
10490	02	TIDEWATER & N VA CNTYS	VIRGINIA	0.944	0.958	-0.014	-1.5
621	05	PEORIA, IL	REST OF ILLINOIS	0.924	0.938	-0.014	-1.5
10250	02	URBAN MISSISSIPPI	MISSISSIPPI	0.899	0.913	-0.014	-1.5
528	04	LAKE CHARLES, LA	REST OF LOUISIANA	0.926	0.941	-0.015	-1.6
2050	28	SAN DIEGO/IMPERIAL, CA	REST OF CALIFORNIA	1.007	1.022	-0.015	-1.5
1040	02	SMALL GA CITIES 02	REST OF GEORGIA	0.935	0.951	-0.016	-1.7
900	24	CORPUS CHRISTI, TX	REST OF TEXAS	0.924	0.941	-0.017	-1.8
10230	03	S. CNTRL CT	CONNECTICUT	1.106	1.123	-0.017	-1.5
951	46	MILWAUKEE SUBURBS (SE), WI	WISCONSIN	0.968	0.985	-0.017	-1.7
528	03	BATON ROUGE, LA	REST OF LOUISIANA	0.926	0.944	-0.018	-1.9
16510	18	EASTERN VALLEY, WV	WEST VIRGINIA	0.919	0.937	-0.018	-1.9
900	25	ORANGE, TX	REST OF TEXAS	0.924	0.944	-0.020	-2.1
900	13	ODESSA, TX	REST OF TEXAS	0.924	0.946	-0.022	-2.3
900	23	MIDLAND, TX	REST OF TEXAS	0.924	0.946	-0.022	-2.3
16510	16	CHARLESTON, WV	WEST VIRGINIA	0.919	0.941	-0.022	-2.3
801	02	ROCHESTER/SURR. CNTYS, NY	REST OF NEW YORK	0.973	0.995	-0.022	-2.2
510	05	BIRMINGHAM, AL	ALABAMA	0.932	0.957	-0.025	-2.6
660	01	LEXINGTON & LOUISVILLE, KY	KENTUCKY	0.921	0.946	-0.025	-2.6
900	07	SAN ANTONIO, TX	REST OF TEXAS	0.924	0.949	-0.025	-2.6
10490	01	RICHMOND & CHARLOTTESVILLE, VA	VIRGINIA	0.944	0.975	-0.031	-3.2
621	02	ROCKFORD, IL	REST OF ILLINOIS	0.924	0.955	-0.031	-3.2
900	12	DENTON, TX	REST OF TEXAS	0.924	0.955	-0.031	-3.2
951	04	MILWAUKEE, WI	WISCONSIN	0.968	0.999	-0.031	-3.1
951	15	MADISON (DANE CNTY), WI	WISCONSIN	0.968	1.002	-0.034	-3.4
2050	18	SANTA BARBARA, CA	REST OF CALIFORNIA	1.007	1.042	-0.035	-3.4
621	09	SPRINGFIELD, IL	REST OF ILLINOIS	0.924	0.961	-0.037	-3.9
10230	02	SW CT	CONNECTICUT	1.106	1.143	-0.037	-3.2
740	04	SUBURBAN KANSAS CITY, KANSAS	KANSAS	0.945	0.982	-0.037	-3.8
740	05	KANSAS CITY, KANSAS	KANSAS	0.945	0.982	-0.037	-3.8
542	12	MONTEREY/SANTA CRUZ, CA	REST OF CALIFORNIA	1.007	1.044	-0.037	-3.5
700	01	* URBAN MASS	REST OF MASSACHUSETTS	1.041	1.084	-0.043	-4.0
865	02	* LG PA CITIES	REST OF PENNSYLVANIA	0.951	1.001	-0.050	-5.0
11260	01	* ST. LOUIS/LG E. CITIES, MO	REST OF MISSOURI	0.911	0.968	-0.057	-5.9
865	01	* PHILLY/PITT MED SHCLS/HOSPS, PA	REST OF PENNSYLVANIA	0.951	1.041	-0.090	-8.6

* Locality part

SOURCE: Health Economics Research, Inc.

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
ALABAMA	Autauga	REST OF AL	06	99	0.902	0.932
	Baldwin	MOBILE, AL	04	99	0.925	0.932
	Barbour	REST OF AL	06	99	0.902	0.932
	Bibb	REST OF AL	06	99	0.902	0.932
	Blount	REST OF AL	06	99	0.902	0.932
	Bullock	REST OF AL	06	99	0.902	0.932
	Butler	SOUTHEAST AL	03	99	0.922	0.932
	Calhoun	NORTH CENTRAL AL	02	99	0.920	0.932
	Chambers	REST OF AL	06	99	0.902	0.932
	Cherokee	REST OF AL	06	99	0.902	0.932
	Chilton	REST OF AL	06	99	0.902	0.932
	Choctaw	REST OF AL	06	99	0.902	0.932
	Clarke	REST OF AL	06	99	0.902	0.932
	Clay	REST OF AL	06	99	0.902	0.932
	Cleburne	REST OF AL	06	99	0.902	0.932
	Coffee	REST OF AL	06	99	0.902	0.932
	Colbert	NORTHWEST AL	01	99	0.939	0.932
	Conecuh	REST OF AL	06	99	0.902	0.932
	Coosa	REST OF AL	06	99	0.902	0.932
	Covington	SOUTHEAST AL	03	99	0.922	0.932
	Crenshaw	SOUTHEAST AL	03	99	0.922	0.932
	Cullman	REST OF AL	06	99	0.902	0.932
	Dale	REST OF AL	06	99	0.902	0.932
	Dallas	SOUTHEAST AL	03	99	0.922	0.932
	DeKalb	NORTH CENTRAL AL	02	99	0.920	0.932
	Elmore	REST OF AL	06	99	0.902	0.932
	Escambia	REST OF AL	06	99	0.902	0.932
	Etowah	NORTH CENTRAL AL	02	99	0.920	0.932
	Fayette	NORTH CENTRAL AL	02	99	0.920	0.932
	Franklin	NORTHWEST AL	01	99	0.939	0.932
	Geneva	REST OF AL	06	99	0.902	0.932
	Greene	REST OF AL	06	99	0.902	0.932
	Hale	REST OF AL	06	99	0.902	0.932
	Henry	REST OF AL	06	99	0.902	0.932
	Houston	SOUTHEAST AL	03	99	0.922	0.932
	Jackson	REST OF AL	06	99	0.902	0.932
	Jefferson	BIRMINGHAM, AL	05	99	0.957	0.932
	Lamar	REST OF AL	06	99	0.902	0.932
	Lauderdale	NORTHWEST AL	01	99	0.939	0.932
	Lawrence	NORTHWEST AL	01	99	0.939	0.932
	Lee	SOUTHEAST AL	03	99	0.922	0.932
	Limestone	NORTHWEST AL	01	99	0.939	0.932
	Lowndes	REST OF AL	06	99	0.902	0.932
	Macon	REST OF AL	06	99	0.902	0.932
	Madison	NORTHWEST AL	01	99	0.939	0.932
	Marengo	REST OF AL	06	99	0.902	0.932
	Marion	REST OF AL	06	99	0.902	0.932
	Marshall	NORTH CENTRAL AL	02	99	0.920	0.932
	Mobile	MOBILE, AL	04	99	0.925	0.932
	Monroe	REST OF AL	06	99	0.902	0.932
	Montgomery	SOUTHEAST AL	03	99	0.922	0.932
	Morgan	NORTHWEST AL	01	99	0.939	0.932
	Perry	REST OF AL	06	99	0.902	0.932
	Pickens	REST OF AL	06	99	0.902	0.932
	Pike	REST OF AL	06	99	0.902	0.932
	Randolph	REST OF AL	06	99	0.902	0.932
	Russell	SOUTHEAST AL	03	99	0.922	0.932
	Shelby	REST OF AL	06	99	0.902	0.932
	St. Clair	REST OF AL	06	99	0.902	0.932
	Sumter	REST OF AL	06	99	0.902	0.932
	Talladega	REST OF AL	06	99	0.902	0.932
	Tallapoosa	REST OF AL	06	99	0.902	0.932
	Tuscaloosa	NORTH CENTRAL AL	02	99	0.920	0.932
	Walker	REST OF AL	06	99	0.902	0.932
	Washington	REST OF AL	06	99	0.902	0.932
	Wilcox	REST OF AL	06	99	0.902	0.932
	Winston	REST OF AL	06	99	0.902	0.932
ALASKA	STATEWIDE	STATEWIDE	01	01	1.128	1.128

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
ARIZONA	Apache	REST OF AZ	99	99	0.988	0.995
	Cochise	REST OF AZ	99	99	0.988	0.995
	* Coconino	FLAGSTAFF, AZ	05	99	0.973	0.995
	* Coconino	REST OF AZ	99	99	0.988	0.995
	Gila	REST OF AZ	99	99	0.988	0.995
	Graham	REST OF AZ	99	99	0.988	0.995
	Greenlee	REST OF AZ	99	99	0.988	0.995
	* Maricopa	PHOENIX, AZ	01	99	1.002	0.995
	* Maricopa	REST OF AZ	99	99	0.988	0.995
	Mohave	REST OF AZ	99	99	0.988	0.995
	Navajo	REST OF AZ	99	99	0.988	0.995
	* Pima	TUCSON, AZ	02	99	0.980	0.995
	* Pima	REST OF AZ	99	99	0.988	0.995
	Pinal	REST OF AZ	99	99	0.988	0.995
	Santa Cruz	REST OF AZ	99	99	0.988	0.995
	* Yavapai	PRESCOTT, AZ	07	99	0.964	0.995
	* Yavapai	REST OF AZ	99	99	0.988	0.995
	* Yuma	YUMA, AZ	08	99	0.976	0.995
	* Yuma	REST OF AZ	99	99	0.988	0.995
ARKANSAS	STATEWIDE	STATEWIDE	13	13	0.887	0.887
CALIFORNIA	Alameda	OAKLAND/BERKELEY, CA	07	07	1.092	1.092
	Alpine	STOCKTON/SURR. CNTYS , CA	08	99	0.998	1.007
	Amador	STOCKTON/SURR. CNTYS , CA	08	99	0.998	1.007
	Butte	NE RURAL, CA	02	99	0.952	1.007
	Calaveras	STOCKTON/SURR. CNTYS , CA	08	99	0.998	1.007
	Colusa	NE RURAL, CA	02	99	0.952	1.007
	Contra Costa	OAKLAND/BERKELEY, CA	07	07	1.092	1.092
	Del Norte	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	El Dorado	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Fresno	FRESNO/MADERA, CA	11	99	0.971	1.007
	Glenn	NE RURAL, CA	02	99	0.952	1.007
	Humboldt	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Imperial	SAN DIEGO/IMPERIAL, CA	28	99	1.022	1.007
	Inyo	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	Kern	BAKERSFIELD , CA	14	99	0.994	1.007
	Kings	KINGS/TULARE, CA	13	99	0.955	1.007
	Lake	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Lassen	NE RURAL, CA	02	99	0.952	1.007
	Los Angeles	LOS ANGELES	18-25	18	1.103	1.103
	Madera	FRESNO/MADERA, CA	11	99	0.971	1.007
	Marin	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063
	Mariposa	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Mendocino	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Merced	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Modoc	NE RURAL, CA	02	99	0.952	1.007
	Mono	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	Monterey	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	Napa	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063
	Nevada	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Orange	ANAHEIM/SANTA ANA, CA	26	26	1.092	1.092
	Placer	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Plumas	NE RURAL, CA	02	99	0.952	1.007
	Riverside	RIVERSIDE, CA	27	99	1.014	1.007
	Sacramento	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	San Benito	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	San Bernardino	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	San Diego	SAN DIEGO/IMPERIAL, CA	28	99	1.022	1.007
	San Francisco	SAN FRANCISCO, CA	05	05	1.153	1.153
	San Joaquin	STOCKTON/SURR. CNTYS , CA	08	99	0.998	1.007
	San Luis Obispo	SANTA BARBARA, CA	16	99	1.042	1.007
	San Mateo	SAN MATEO, CA	06	06	1.130	1.130
	Santa Barbara	SANTA BARBARA, CA	16	99	1.042	1.007
	Santa Clara	SANTA CLARA, CA	09	09	1.134	1.134
	Santa Cruz	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	Shasta	NE RURAL, CA	02	99	0.952	1.007
	Sierra	NE RURAL, CA	02	99	0.952	1.007
	Siskiyou	NE RURAL, CA	02	99	0.952	1.007
	Solano	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Sonoma	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Stanislaus	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Sutter	NE RURAL, CA	02	99	0.952	1.007
	Tehama	NE RURAL, CA	02	99	0.952	1.007
	Trinity	NE RURAL, CA	02	99	0.952	1.007
	Tulare	KINGS/TULARE, CA	13	99	0.955	1.007
	Tuolumne	STOCKTON/SURR. CNTYS , CA	08	99	0.998	1.007
	Ventura	VENTURA, CA	17	17	1.079	1.079
	Yolo	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Yuba	NE RURAL, CA	02	99	0.952	1.007
COLORADO	STATEWIDE	STATEWIDE	00	00	0.966	0.966
CONNECTICUT	* Fairfield	SW CT	02	99	1.143	1.106
	* Fairfield	S. CNTRL CT	03	99	1.123	1.106
	Hartford	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Litchfield	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Litchfield	SW CT	02	99	1.143	1.106
	Middlesex	EASTERN CT	04	99	1.072	1.106
	* New Haven	NW AND N. CNTRL CT	01	99	1.092	1.106
	* New Haven	S. CNTRL CT	03	99	1.123	1.106
	* New London	NW AND N. CNTRL CT	01	99	1.092	1.106
	* New London	EASTERN CT	04	99	1.072	1.106
	* Tolland	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Tolland	EASTERN CT	04	99	1.072	1.106
	Windham	EASTERN CT	04	99	1.072	1.106
DELAWARE	STATEWIDE	STATEWIDE	01	01	1.015	1.015
DISTRICT OF COLUMBIA	Alexandria City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Arlington	DC +MD/VA SUBURBS	01	01	1.105	1.105
	District of Columbia	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Fairfax	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Fairfax City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Falls Church City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Montgomery	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Prince George's	DC +MD/VA SUBURBS	01	01	1.105	1.105
FLORIDA	Alachua	N/NC FL CITIES	02	99	0.988	0.984
	Baker	REST OF FLORIDA	01	99	0.969	0.984
	Bay	REST OF FLORIDA	01	99	0.969	0.984
	Bradford	REST OF FLORIDA	01	99	0.969	0.984
	Brevard	N/NC FL CITIES	02	99	0.988	0.984
	Broward	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Calhoun	REST OF FLORIDA	01	99	0.969	0.984
	Charlotte	N/NC FL CITIES	02	99	0.988	0.984
	Citrus	REST OF FLORIDA	01	99	0.969	0.984
	Clay	N/NC FL CITIES	02	99	0.988	0.984
	Collier	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Columbia	REST OF FLORIDA	01	99	0.969	0.984
	Dade	MIAMI, FL	04	04	1.114	1.114
	DeSoto	REST OF FLORIDA	01	99	0.969	0.984
	Dixie	REST OF FLORIDA	01	99	0.969	0.984
	Duval	N/NC FL CITIES	02	99	0.988	0.984
	Escambia	N/NC FL CITIES	02	99	0.988	0.984
	Flagler	REST OF FLORIDA	01	99	0.969	0.984
	Franklin	REST OF FLORIDA	01	99	0.969	0.984
	Gadsden	REST OF FLORIDA	01	99	0.969	0.984
	Gilchrist	REST OF FLORIDA	01	99	0.969	0.984
	Glades	REST OF FLORIDA	01	99	0.969	0.984
	Gulf	REST OF FLORIDA	01	99	0.969	0.984
	Hamilton	REST OF FLORIDA	01	99	0.969	0.984
	Hardee	N/NC FL CITIES	02	99	0.988	0.984
	Hendry	N/NC FL CITIES	02	99	0.988	0.984
	Hernando	REST OF FLORIDA	01	99	0.969	0.984
	Highlands	REST OF FLORIDA	01	99	0.969	0.984
	Hillsborough	N/NC FL CITIES	02	99	0.988	0.984
	Holmes	REST OF FLORIDA	01	99	0.969	0.984
	Indian River	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Jackson	REST OF FLORIDA	01	99	0.969	0.984

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Jefferson	REST OF FLORIDA	01	99	0.969	0.984
	Lafayette	REST OF FLORIDA	01	99	0.969	0.984
	Lake	REST OF FLORIDA	01	99	0.969	0.984
	Lee	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Leon	N/NC FL CITIES	02	99	0.988	0.984
	Levy	REST OF FLORIDA	01	99	0.969	0.984
	Liberty	REST OF FLORIDA	01	99	0.969	0.984
	Madison	REST OF FLORIDA	01	99	0.969	0.984
	Manatee	N/NC FL CITIES	02	99	0.988	0.984
	Marion	REST OF FLORIDA	01	99	0.969	0.984
	Martin	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Monroe	MIAMI, FL	04	04	1.114	1.114
	Nassau	REST OF FLORIDA	01	99	0.969	0.984
	Okaloosa	REST OF FLORIDA	01	99	0.969	0.984
	Okeechobee	N/NC FL CITIES	02	99	0.988	0.984
	Orange	N/NC FL CITIES	02	99	0.988	0.984
	Osceola	N/NC FL CITIES	02	99	0.988	0.984
	Palm Beach	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Pasco	REST OF FLORIDA	01	99	0.969	0.984
	Pinellas	N/NC FL CITIES	02	99	0.988	0.984
	Polk	N/NC FL CITIES	02	99	0.988	0.984
	Putnam	REST OF FLORIDA	01	99	0.969	0.984
	Santa Rosa	N/NC FL CITIES	02	99	0.988	0.984
	Sarasota	N/NC FL CITIES	02	99	0.988	0.984
	Seminole	N/NC FL CITIES	02	99	0.988	0.984
	St. Johns	N/NC FL CITIES	02	99	0.988	0.984
	St. Lucie	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Sumter	REST OF FLORIDA	01	99	0.969	0.984
	Suwannee	REST OF FLORIDA	01	99	0.969	0.984
	Taylor	REST OF FLORIDA	01	99	0.969	0.984
	Union	N/NC FL CITIES	02	99	0.988	0.984
	Volusia	N/NC FL CITIES	02	99	0.988	0.984
	Wakulla	REST OF FLORIDA	01	99	0.969	0.984
	Walton	REST OF FLORIDA	01	99	0.969	0.984
	Washington	REST OF FLORIDA	01	99	0.969	0.984
GEORGIA	Appling	REST OF GA	04	99	0.917	0.935
	Atkinson	REST OF GA	04	99	0.917	0.935
	Bacon	REST OF GA	04	99	0.917	0.935
	Baker	REST OF GA	04	99	0.917	0.935
	Baldwin	SMALL GA CITIES 03	03	99	0.929	0.935
	Banks	REST OF GA	04	99	0.917	0.935
	Barrow	REST OF GA	04	99	0.917	0.935
	Bartow	REST OF GA	04	99	0.917	0.935
	Ben Hill	REST OF GA	04	99	0.917	0.935
	Berrien	REST OF GA	04	99	0.917	0.935
	Bibb	SMALL GA CITIES 02	02	99	0.951	0.935
	Bleckley	REST OF GA	04	99	0.917	0.935
	Brantley	REST OF GA	04	99	0.917	0.935
	Brooks	REST OF GA	04	99	0.917	0.935
	Bryan	REST OF GA	04	99	0.917	0.935
	Bulloch	SMALL GA CITIES 03	03	99	0.929	0.935
	Burke	REST OF GA	04	99	0.917	0.935
	Butts	ATLANTA, GA	01	01	1.011	1.011
	Calhoun	REST OF GA	04	99	0.917	0.935
	Camden	REST OF GA	04	99	0.917	0.935
	Candler	REST OF GA	04	99	0.917	0.935
	Carroll	REST OF GA	04	99	0.917	0.935
	Catoosa	SMALL GA CITIES 03	03	99	0.929	0.935
	Charlton	REST OF GA	04	99	0.917	0.935
	Chatham	SMALL GA CITIES 02	02	99	0.951	0.935
	Chattahoochee	REST OF GA	04	99	0.917	0.935
	Chattooga	REST OF GA	04	99	0.917	0.935
	Cherokee	ATLANTA, GA	01	01	1.011	1.011
	Clarke	SMALL GA CITIES 03	03	99	0.929	0.935
	Clay	REST OF GA	04	99	0.917	0.935
	Clayton	ATLANTA, GA	01	01	1.011	1.011
	Clinch	REST OF GA	04	99	0.917	0.935
	Cobb	ATLANTA, GA	01	01	1.011	1.011
	Coffee	REST OF GA	04	99	0.917	0.935

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Colquitt	REST OF GA	04	99	0.917	0.935
	Columbia	REST OF GA	04	99	0.917	0.935
	Cook	REST OF GA	04	99	0.917	0.935
	Coweta	SMALL GA CITIES 03	03	99	0.929	0.935
	Crawford	REST OF GA	04	99	0.917	0.935
	Crisp	REST OF GA	04	99	0.917	0.935
	Dade	REST OF GA	04	99	0.917	0.935
	Dawson	REST OF GA	04	99	0.917	0.935
	DeKalb	ATLANTA, GA	01	01	1.011	1.011
	Decatur	REST OF GA	04	99	0.917	0.935
	Dodge	REST OF GA	04	99	0.917	0.935
	Dooly	REST OF GA	04	99	0.917	0.935
	Dougherty	SMALL GA CITIES 03	03	99	0.929	0.935
	Douglas	ATLANTA, GA	01	01	1.011	1.011
	Early	REST OF GA	04	99	0.917	0.935
	Echols	REST OF GA	04	99	0.917	0.935
	Effingham	REST OF GA	04	99	0.917	0.935
	Elbert	REST OF GA	04	99	0.917	0.935
	Emanuel	REST OF GA	04	99	0.917	0.935
	Evans	REST OF GA	04	99	0.917	0.935
	Fannin	REST OF GA	04	99	0.917	0.935
	Fayette	ATLANTA, GA	01	01	1.011	1.011
	Floyd	SMALL GA CITIES 03	03	99	0.929	0.935
	Forsyth	ATLANTA, GA	01	01	1.011	1.011
	Franklin	REST OF GA	04	99	0.917	0.935
	Fulton	ATLANTA, GA	01	01	1.011	1.011
	Gilmer	REST OF GA	04	99	0.917	0.935
	Glascock	REST OF GA	04	99	0.917	0.935
	Glynn	SMALL GA CITIES 03	03	99	0.929	0.935
	Gordon	REST OF GA	04	99	0.917	0.935
	Grady	REST OF GA	04	99	0.917	0.935
	Greene	REST OF GA	04	99	0.917	0.935
	Gwinnett	ATLANTA, GA	01	01	1.011	1.011
	Habersham	REST OF GA	04	99	0.917	0.935
	Hall	SMALL GA CITIES 03	03	99	0.929	0.935
	Hancock	REST OF GA	04	99	0.917	0.935
	Haralson	REST OF GA	04	99	0.917	0.935
	Harris	REST OF GA	04	99	0.917	0.935
	Hart	REST OF GA	04	99	0.917	0.935
	Heard	REST OF GA	04	99	0.917	0.935
	Henry	ATLANTA, GA	01	01	1.011	1.011
	Houston	SMALL GA CITIES 02	02	99	0.951	0.935
	Irwin	REST OF GA	04	99	0.917	0.935
	Jackson	REST OF GA	04	99	0.917	0.935
	Jasper	REST OF GA	04	99	0.917	0.935
	Jeff Davis	REST OF GA	04	99	0.917	0.935
	Jefferson	REST OF GA	04	99	0.917	0.935
	Jenkins	REST OF GA	04	99	0.917	0.935
	Johnson	REST OF GA	04	99	0.917	0.935
	Jones	REST OF GA	04	99	0.917	0.935
	Lamar	REST OF GA	04	99	0.917	0.935
	Lanier	REST OF GA	04	99	0.917	0.935
	Laurens	SMALL GA CITIES 03	03	99	0.929	0.935
	Lee	REST OF GA	04	99	0.917	0.935
	Liberty	REST OF GA	04	99	0.917	0.935
	Lincoln	REST OF GA	04	99	0.917	0.935
	Long	REST OF GA	04	99	0.917	0.935
	Lowndes	SMALL GA CITIES 03	03	99	0.929	0.935
	Lumpkin	REST OF GA	04	99	0.917	0.935
	Macon	REST OF GA	04	99	0.917	0.935
	Madison	REST OF GA	04	99	0.917	0.935
	Marion	REST OF GA	04	99	0.917	0.935
	McDuffie	REST OF GA	04	99	0.917	0.935
	McIntosh	REST OF GA	04	99	0.917	0.935
	Meriwether	REST OF GA	04	99	0.917	0.935
	Miller	REST OF GA	04	99	0.917	0.935
	Mitchell	REST OF GA	04	99	0.917	0.935
	Monroe	REST OF GA	04	99	0.917	0.935
	Montgomery	REST OF GA	04	99	0.917	0.935
	Morgan	REST OF GA	04	99	0.917	0.935

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Murray	REST OF GA	04	99	0.917	0.935
	Muscogee	SMALL GA CITIES 02	02	99	0.951	0.935
	Newton	ATLANTA, GA	01	01	1.011	1.011
	Oconee	REST OF GA	04	99	0.917	0.935
	Oglethorpe	REST OF GA	04	99	0.917	0.935
	Paulding	ATLANTA, GA	01	01	1.011	1.011
	Peach	REST OF GA	04	99	0.917	0.935
	Pickens	REST OF GA	04	99	0.917	0.935
	Pierce	REST OF GA	04	99	0.917	0.935
	Pike	REST OF GA	04	99	0.917	0.935
	Polk	REST OF GA	04	99	0.917	0.935
	Pulaski	REST OF GA	04	99	0.917	0.935
	Putnam	REST OF GA	04	99	0.917	0.935
	Quitman	REST OF GA	04	99	0.917	0.935
	Rabun	REST OF GA	04	99	0.917	0.935
	Randolph	REST OF GA	04	99	0.917	0.935
	Richmond	SMALL GA CITIES 02	02	99	0.951	0.935
	Rockdale	ATLANTA, GA	01	01	1.011	1.011
	Schley	REST OF GA	04	99	0.917	0.935
	Screven	REST OF GA	04	99	0.917	0.935
	Seminole	REST OF GA	04	99	0.917	0.935
	Spalding	SMALL GA CITIES 03	03	99	0.929	0.935
	Stephens	REST OF GA	04	99	0.917	0.935
	Stewart	REST OF GA	04	99	0.917	0.935
	Sumter	REST OF GA	04	99	0.917	0.935
	Talbot	REST OF GA	04	99	0.917	0.935
	Taliaferro	REST OF GA	04	99	0.917	0.935
	Tattnall	REST OF GA	04	99	0.917	0.935
	Taylor	REST OF GA	04	99	0.917	0.935
	Telfair	REST OF GA	04	99	0.917	0.935
	Terrell	REST OF GA	04	99	0.917	0.935
	Thomas	SMALL GA CITIES 03	03	99	0.929	0.935
	Tift	REST OF GA	04	99	0.917	0.935
	Toombs	REST OF GA	04	99	0.917	0.935
	Towns	REST OF GA	04	99	0.917	0.935
	Treutlen	REST OF GA	04	99	0.917	0.935
	Troup	SMALL GA CITIES 03	03	99	0.929	0.935
	Turner	REST OF GA	04	99	0.917	0.935
	Twiggs	REST OF GA	04	99	0.917	0.935
	Union	REST OF GA	04	99	0.917	0.935
	Upson	REST OF GA	04	99	0.917	0.935
	Walker	SMALL GA CITIES 03	03	99	0.929	0.935
	Walton	ATLANTA, GA	01	01	1.011	1.011
	Ware	SMALL GA CITIES 03	03	99	0.929	0.935
	Warren	REST OF GA	04	99	0.917	0.935
	Washington	REST OF GA	04	99	0.917	0.935
	Wayne	REST OF GA	04	99	0.917	0.935
	Webster	REST OF GA	04	99	0.917	0.935
	Wheeler	REST OF GA	04	99	0.917	0.935
	White	REST OF GA	04	99	0.917	0.935
	Whitfield	SMALL GA CITIES 03	03	99	0.929	0.935
	Wilcox	REST OF GA	04	99	0.917	0.935
	Wilkes	REST OF GA	04	99	0.917	0.935
	Wilkinson	REST OF GA	04	99	0.917	0.935
	Worth	REST OF GA	04	99	0.917	0.935
HAWAII/GUAM	STATEWIDE	HAWAII/GUAM	01	01	1.086	1.086
IDAHO	Ada	SOUTH IDAHO	11	99	0.914	0.911
	Adams	SOUTH IDAHO	11	99	0.914	0.911
	Bannock	SOUTH IDAHO	11	99	0.914	0.911
	Bear Lake	SOUTH IDAHO	11	99	0.914	0.911
	Benewah	NORTH IDAHO	12	99	0.901	0.911
	Bingham	SOUTH IDAHO	11	99	0.914	0.911
	Blaine	SOUTH IDAHO	11	99	0.914	0.911
	Boise	SOUTH IDAHO	11	99	0.914	0.911
	Bonner	NORTH IDAHO	12	99	0.901	0.911
	Bonneville	SOUTH IDAHO	11	99	0.914	0.911
	Boundary	NORTH IDAHO	12	99	0.901	0.911
	Butte	SOUTH IDAHO	11	99	0.914	0.911

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Camas	SOUTH IDAHO	11	99	0.914	0.911
	Canyon	SOUTH IDAHO	11	99	0.914	0.911
	Caribou	SOUTH IDAHO	11	99	0.914	0.911
	Cassia	SOUTH IDAHO	11	99	0.914	0.911
	Clark	SOUTH IDAHO	11	99	0.914	0.911
	Clearwater	NORTH IDAHO	12	99	0.901	0.911
	Custer	SOUTH IDAHO	11	99	0.914	0.911
	Elmore	SOUTH IDAHO	11	99	0.914	0.911
	Franklin	SOUTH IDAHO	11	99	0.914	0.911
	Fremont	SOUTH IDAHO	11	99	0.914	0.911
	Gem	SOUTH IDAHO	11	99	0.914	0.911
	Gooding	SOUTH IDAHO	11	99	0.914	0.911
	Idaho	NORTH IDAHO	12	99	0.901	0.911
	Jefferson	SOUTH IDAHO	11	99	0.914	0.911
	Jerome	SOUTH IDAHO	11	99	0.914	0.911
	Kootenai	NORTH IDAHO	12	99	0.901	0.911
	Latah	NORTH IDAHO	12	99	0.901	0.911
	Lemhi	NORTH IDAHO	12	99	0.901	0.911
	Lewis	NORTH IDAHO	12	99	0.901	0.911
	Lincoln	SOUTH IDAHO	11	99	0.914	0.911
	Madison	SOUTH IDAHO	11	99	0.914	0.911
	Minidoka	SOUTH IDAHO	11	99	0.914	0.911
	Nez Perce	NORTH IDAHO	12	99	0.901	0.911
	Oneida	SOUTH IDAHO	11	99	0.914	0.911
	Owyhee	SOUTH IDAHO	11	99	0.914	0.911
	Payette	SOUTH IDAHO	11	99	0.914	0.911
	Power	SOUTH IDAHO	11	99	0.914	0.911
	Shoshone	NORTH IDAHO	12	99	0.901	0.911
	Teton	SOUTH IDAHO	11	99	0.914	0.911
	Twin Falls	SOUTH IDAHO	11	99	0.914	0.911
	Valley	SOUTH IDAHO	11	99	0.914	0.911
	Washington	SOUTH IDAHO	11	99	0.914	0.911
ILLINOIS	Adams	QUINCY, IL	07	99	0.886	0.924
	Alexander	SOUTHERN IL	14	99	0.889	0.924
	Bond	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Boone	ROCKFORD, IL	02	99	0.955	0.924
	Brown	QUINCY, IL	07	99	0.886	0.924
	Bureau	DE KALB, IL	03	99	0.912	0.924
	Calhoun	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Carroll	NORTHWEST, IL	01	99	0.896	0.924
	Cass	QUINCY, IL	07	99	0.886	0.924
	Champaign	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Christian	SPRINGFIELD, IL	09	99	0.961	0.924
	Clark	DECATUR, IL	11	99	0.918	0.924
	Clay	SOUTHEAST IL	13	99	0.882	0.924
	Clinton	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Coles	DECATUR, IL	11	99	0.918	0.924
	Cook	CHICAGO, IL	16	16	1.066	1.066
	Crawford	SOUTHEAST IL	13	99	0.882	0.924
	Cumberland	DECATUR, IL	11	99	0.918	0.924
	De Witt	NORMAL, IL	08	99	0.926	0.924
	DeKalb	DE KALB, IL	03	99	0.912	0.924
	Douglas	DECATUR, IL	11	99	0.918	0.924
	DuPage	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Edgar	DECATUR, IL	11	99	0.918	0.924
	Edwards	SOUTHEAST IL	13	99	0.882	0.924
	Effingham	SOUTHEAST IL	13	99	0.882	0.924
	Fayette	SOUTHEAST IL	13	99	0.882	0.924
	Ford	KANKAKEE, IL	06	99	0.924	0.924
	Franklin	SOUTHERN IL	14	99	0.889	0.924
	Fulton	NORMAL, IL	08	99	0.926	0.924
	Gallatin	SOUTHERN IL	14	99	0.889	0.924
	Greene	QUINCY, IL	07	99	0.886	0.924
	Grundy	DE KALB, IL	03	99	0.912	0.924
	Hamilton	SOUTHEAST IL	13	99	0.882	0.924
	Hancock	QUINCY, IL	07	99	0.886	0.924
	Hardin	SOUTHERN IL	14	99	0.889	0.924
	Henderson	ROCK ISLAND, IL	04	99	0.914	0.924
	Henry	ROCK ISLAND, IL	04	99	0.914	0.924

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
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	Iroquois	KANKAKEE, IL	06	99	0.924	0.924
	Jackson	SOUTHERN IL	14	99	0.889	0.924
	Jasper	SOUTHEAST IL	13	99	0.882	0.924
	Jefferson	SOUTHEAST IL	13	99	0.882	0.924
	Jersey	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Jo Daviess	NORTHWEST, IL	01	99	0.896	0.924
	Johnson	SOUTHERN IL	14	99	0.889	0.924
	Kane	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Kankakee	KANKAKEE, IL	06	99	0.924	0.924
	Kendall	DE KALB, IL	03	99	0.912	0.924
	Knox	ROCK ISLAND, IL	04	99	0.914	0.924
	La Salle	DE KALB, IL	03	99	0.912	0.924
	Lake	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Lawrence	SOUTHEAST IL	13	99	0.882	0.924
	Lee	DE KALB, IL	03	99	0.912	0.924
	Livingston	KANKAKEE, IL	06	99	0.924	0.924
	Logan	NORMAL, IL	06	99	0.926	0.924
	Macon	DECATUR, IL	11	99	0.918	0.924
	Macoupin	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Madison	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Marion	SOUTHEAST IL	13	99	0.882	0.924
	Marshall	PEORIA, IL	05	99	0.938	0.924
	Mason	NORMAL, IL	06	99	0.926	0.924
	Massac	SOUTHERN IL	14	99	0.889	0.924
	McDonough	QUINCY, IL	07	99	0.886	0.924
	McHenry	ROCKFORD, IL	02	99	0.955	0.924
	McLean	NORMAL, IL	06	99	0.926	0.924
	Menard	SPRINGFIELD, IL	09	99	0.961	0.924
	Mercer	ROCK ISLAND, IL	04	99	0.914	0.924
	Monroe	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Montgomery	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Morgan	QUINCY, IL	07	99	0.886	0.924
	Moultrie	DECATUR, IL	11	99	0.918	0.924
	Ogle	NORTHWEST, IL	01	99	0.896	0.924
	Peoria	PEORIA, IL	05	99	0.938	0.924
	Perry	SOUTHERN IL	14	99	0.889	0.924
	Piatt	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Pike	QUINCY, IL	07	99	0.886	0.924
	Pope	SOUTHERN IL	14	99	0.889	0.924
	Pulaski	SOUTHERN IL	14	99	0.889	0.924
	Putnam	DE KALB, IL	03	99	0.912	0.924
	Randolph	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Richland	SOUTHEAST IL	13	99	0.882	0.924
	Rock Island	ROCK ISLAND, IL	04	99	0.914	0.924
	Saline	SOUTHERN IL	14	99	0.889	0.924
	Sangamon	SPRINGFIELD, IL	09	99	0.961	0.924
	Schuyler	QUINCY, IL	07	99	0.886	0.924
	Scott	QUINCY, IL	07	99	0.886	0.924
	Shelby	DECATUR, IL	11	99	0.918	0.924
	St. Clair	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Stark	ROCK ISLAND, IL	04	99	0.914	0.924
	Stephenson	NORTHWEST, IL	01	99	0.896	0.924
	Tazewell	NORMAL, IL	06	99	0.926	0.924
	Union	SOUTHERN IL	14	99	0.889	0.924
	Vermilion	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Wabash	SOUTHEAST IL	13	99	0.882	0.924
	Warren	ROCK ISLAND, IL	04	99	0.914	0.924
	Washington	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Wayne	SOUTHEAST IL	13	99	0.882	0.924
	White	SOUTHEAST IL	13	99	0.882	0.924
	Whiteside	DE KALB, IL	03	99	0.912	0.924
	Will	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Williamson	SOUTHERN IL	14	99	0.889	0.924
	Winnebago	ROCKFORD, IL	02	99	0.955	0.924
	Woodford	PEORIA, IL	05	99	0.938	0.924
INDIANA	Adams	REST OF IN	03	99	0.901	0.925
	Allen	METROPOLITAN IN	01	99	0.938	0.925
	Bartholomew	URBAN IN	02	99	0.912	0.925
	Benton	REST OF IN	03	99	0.901	0.925

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Blackford	REST OF IN	03	99	0.901	0.925
	Boone	REST OF IN	03	99	0.901	0.925
	Brown	REST OF IN	03	99	0.901	0.925
	Carroll	URBAN IN	02	99	0.912	0.925
	Cass	URBAN IN	02	99	0.912	0.925
	Clark	URBAN IN	02	99	0.912	0.925
	Clay	REST OF IN	03	99	0.901	0.925
	Clinton	REST OF IN	03	99	0.901	0.925
	Crawford	REST OF IN	03	99	0.901	0.925
	Daviess	URBAN IN	02	99	0.912	0.925
	De Kalb	REST OF IN	03	99	0.901	0.925
	Dearborn	REST OF IN	03	99	0.901	0.925
	Decatur	REST OF IN	03	99	0.901	0.925
	Delaware	METROPOLITAN IN	01	99	0.938	0.925
	Dubois	REST OF IN	03	99	0.901	0.925
	Elkhart	URBAN IN	02	99	0.912	0.925
	Fayette	REST OF IN	03	99	0.901	0.925
	Floyd	URBAN IN	02	99	0.912	0.925
	Fountain	REST OF IN	03	99	0.901	0.925
	Franklin	REST OF IN	03	99	0.901	0.925
	Fulton	REST OF IN	03	99	0.901	0.925
	Gibson	REST OF IN	03	99	0.901	0.925
	Grant	URBAN IN	02	99	0.912	0.925
	Greene	REST OF IN	03	99	0.901	0.925
	Hamilton	REST OF IN	03	99	0.901	0.925
	Hancock	URBAN IN	02	99	0.912	0.925
	Harrison	REST OF IN	03	99	0.901	0.925
	Hendricks	URBAN IN	02	99	0.912	0.925
	Henry	URBAN IN	02	99	0.912	0.925
	Howard	URBAN IN	02	99	0.912	0.925
	Huntington	REST OF IN	03	99	0.901	0.925
	Jackson	REST OF IN	03	99	0.901	0.925
	Jasper	REST OF IN	03	99	0.901	0.925
	Jay	REST OF IN	03	99	0.901	0.925
	Jefferson	REST OF IN	03	99	0.901	0.925
	Jennings	REST OF IN	03	99	0.901	0.925
	Johnson	URBAN IN	02	99	0.912	0.925
	Knox	URBAN IN	02	99	0.912	0.925
	Kosciusko	URBAN IN	02	99	0.912	0.925
	La Porte	METROPOLITAN IN	01	99	0.938	0.925
	Lagrange	URBAN IN	02	99	0.912	0.925
	Lake	METROPOLITAN IN	01	99	0.938	0.925
	Lawrence	URBAN IN	02	99	0.912	0.925
	Madison	METROPOLITAN IN	01	99	0.938	0.925
	Marion	METROPOLITAN IN	01	99	0.938	0.925
	Marshall	REST OF IN	03	99	0.901	0.925
	Martin	REST OF IN	03	99	0.901	0.925
	Miami	REST OF IN	03	99	0.901	0.925
	Monroe	URBAN IN	02	99	0.912	0.925
	Montgomery	REST OF IN	03	99	0.901	0.925
	Morgan	REST OF IN	03	99	0.901	0.925
	Newton	REST OF IN	03	99	0.901	0.925
	Noble	REST OF IN	03	99	0.901	0.925
	Ohio	REST OF IN	03	99	0.901	0.925
	Orange	REST OF IN	03	99	0.901	0.925
	Owen	REST OF IN	03	99	0.901	0.925
	Parke	REST OF IN	03	99	0.901	0.925
	Perry	REST OF IN	03	99	0.901	0.925
	Pike	REST OF IN	03	99	0.901	0.925
	Porter	METROPOLITAN IN	01	99	0.938	0.925
	Posey	REST OF IN	03	99	0.901	0.925
	Pulaski	REST OF IN	03	99	0.901	0.925
	Putnam	REST OF IN	03	99	0.901	0.925
	Randolph	REST OF IN	03	99	0.901	0.925
	Ripley	REST OF IN	03	99	0.901	0.925
	Rush	REST OF IN	03	99	0.901	0.925
	Scott	REST OF IN	03	99	0.901	0.925
	Shelby	METROPOLITAN IN	01	99	0.938	0.925
	Spencer	REST OF IN	03	99	0.901	0.925
	St. Joseph	URBAN IN	02	99	0.912	0.925

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Starke	REST OF IN	03	99	0.901	0.925
	Steuben	REST OF IN	03	99	0.901	0.925
	Sullivan	REST OF IN	03	99	0.901	0.925
	Switzerland	REST OF IN	03	99	0.901	0.925
	Tippecanoe	URBAN IN	02	99	0.912	0.925
	Tipton	REST OF IN	03	99	0.901	0.925
	Union	REST OF IN	03	99	0.901	0.925
	Vanderburgh	METROPOLITAN IN	01	99	0.936	0.925
	Vermillion	REST OF IN	03	99	0.901	0.925
	Vigo	URBAN IN	02	99	0.912	0.925
	Wabash	REST OF IN	03	99	0.901	0.925
	Warren	REST OF IN	03	99	0.901	0.925
	Warrick	REST OF IN	03	99	0.901	0.925
	Washington	REST OF IN	03	99	0.901	0.925
	Wayne	URBAN IN	02	99	0.912	0.925
	Wells	URBAN IN	02	99	0.912	0.925
	White	REST OF IN	03	99	0.901	0.925
	Whitley	REST OF IN	03	99	0.901	0.925
IOWA	STATEWIDE	STATEWIDE	00	00	0.912	0.912
KANSAS	Allen	REST OF KANSAS	01	99	0.936	0.945
	Anderson	REST OF KANSAS	01	99	0.936	0.945
	Atchison	REST OF KANSAS	01	99	0.936	0.945
	Barber	REST OF KANSAS	01	99	0.936	0.945
	Barton	REST OF KANSAS	01	99	0.936	0.945
	Bourbon	REST OF KANSAS	01	99	0.936	0.945
	Brown	REST OF KANSAS	01	99	0.936	0.945
	Butler	REST OF KANSAS	01	99	0.936	0.945
	Chase	REST OF KANSAS	01	99	0.936	0.945
	Chautauqua	REST OF KANSAS	01	99	0.936	0.945
	Cherokee	REST OF KANSAS	01	99	0.936	0.945
	Cheyenne	REST OF KANSAS	01	99	0.936	0.945
	Clark	REST OF KANSAS	01	99	0.936	0.945
	Clay	REST OF KANSAS	01	99	0.936	0.945
	Cloud	REST OF KANSAS	01	99	0.936	0.945
	Coffey	REST OF KANSAS	01	99	0.936	0.945
	Comanche	REST OF KANSAS	01	99	0.936	0.945
	Cowley	REST OF KANSAS	01	99	0.936	0.945
	Crawford	REST OF KANSAS	01	99	0.936	0.945
	Decatur	REST OF KANSAS	01	99	0.936	0.945
	Dickinson	REST OF KANSAS	01	99	0.936	0.945
	Doniphan	REST OF KANSAS	01	99	0.936	0.945
	Douglas	REST OF KANSAS	01	99	0.936	0.945
	Edwards	REST OF KANSAS	01	99	0.936	0.945
	Elk	REST OF KANSAS	01	99	0.936	0.945
	Ellis	REST OF KANSAS	01	99	0.936	0.945
	Ellsworth	REST OF KANSAS	01	99	0.936	0.945
	Finney	REST OF KANSAS	01	99	0.936	0.945
	Ford	REST OF KANSAS	01	99	0.936	0.945
	Franklin	REST OF KANSAS	01	99	0.936	0.945
	Geary	REST OF KANSAS	01	99	0.936	0.945
	Gove	REST OF KANSAS	01	99	0.936	0.945
	Graham	REST OF KANSAS	01	99	0.936	0.945
	Grant	REST OF KANSAS	01	99	0.936	0.945
	Gray	REST OF KANSAS	01	99	0.936	0.945
	Greeley	REST OF KANSAS	01	99	0.936	0.945
	Greenwood	REST OF KANSAS	01	99	0.936	0.945
	Hamilton	REST OF KANSAS	01	99	0.936	0.945
	Harper	REST OF KANSAS	01	99	0.936	0.945
	Harvey	REST OF KANSAS	01	99	0.936	0.945
	Haskell	REST OF KANSAS	01	99	0.936	0.945
	Hodgeman	REST OF KANSAS	01	99	0.936	0.945
	Jackson	REST OF KANSAS	01	99	0.936	0.945
	Jefferson	REST OF KANSAS	01	99	0.936	0.945
	Jewell	REST OF KANSAS	01	99	0.936	0.945
	Johnson	SUBURBAN KANSAS CITY, KANSAS	04	99	0.982	0.945
	Kearny	REST OF KANSAS	01	99	0.936	0.945
	Kingman	REST OF KANSAS	01	99	0.936	0.945
	Kiowa	REST OF KANSAS	01	99	0.936	0.945

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"Indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basis
	Labette	REST OF KANSAS	01	99	0.936	0.945
	Lane	REST OF KANSAS	01	99	0.936	0.945
	Leavenworth	REST OF KANSAS	01	99	0.936	0.945
	Lincoln	REST OF KANSAS	01	99	0.936	0.945
	Linn	REST OF KANSAS	01	99	0.936	0.945
	Logan	REST OF KANSAS	01	99	0.936	0.945
	Lyon	REST OF KANSAS	01	99	0.936	0.945
	Marion	REST OF KANSAS	01	99	0.936	0.945
	Marshall	REST OF KANSAS	01	99	0.936	0.945
	McPherson	REST OF KANSAS	01	99	0.936	0.945
	Meade	REST OF KANSAS	01	99	0.936	0.945
	Miami	REST OF KANSAS	01	99	0.936	0.945
	Mitchell	REST OF KANSAS	01	99	0.936	0.945
	Montgomery	REST OF KANSAS	01	99	0.936	0.945
	Morris	REST OF KANSAS	01	99	0.936	0.945
	Morton	REST OF KANSAS	01	99	0.936	0.945
	Nemaha	REST OF KANSAS	01	99	0.936	0.945
	Neosho	REST OF KANSAS	01	99	0.936	0.945
	Ness	REST OF KANSAS	01	99	0.936	0.945
	Norton	REST OF KANSAS	01	99	0.936	0.945
	Osage	REST OF KANSAS	01	99	0.936	0.945
	Osborne	REST OF KANSAS	01	99	0.936	0.945
	Ottawa	REST OF KANSAS	01	99	0.936	0.945
	Pawnee	REST OF KANSAS	01	99	0.936	0.945
	Phillips	REST OF KANSAS	01	99	0.936	0.945
	Pottawatomie	REST OF KANSAS	01	99	0.936	0.945
	Pratt	REST OF KANSAS	01	99	0.936	0.945
	Rawlins	REST OF KANSAS	01	99	0.936	0.945
	Reno	REST OF KANSAS	01	99	0.936	0.945
	Republic	REST OF KANSAS	01	99	0.936	0.945
	Rice	REST OF KANSAS	01	99	0.936	0.945
	Riley	REST OF KANSAS	01	99	0.936	0.945
	Rooks	REST OF KANSAS	01	99	0.936	0.945
	Rush	REST OF KANSAS	01	99	0.936	0.945
	Russell	REST OF KANSAS	01	99	0.936	0.945
	Saline	REST OF KANSAS	01	99	0.936	0.945
	Scott	REST OF KANSAS	01	99	0.936	0.945
	Sedgwick	REST OF KANSAS	01	99	0.936	0.945
	Seward	REST OF KANSAS	01	99	0.936	0.945
	Shawnee	REST OF KANSAS	01	99	0.936	0.945
	Sheridan	REST OF KANSAS	01	99	0.936	0.945
	Sherman	REST OF KANSAS	01	99	0.936	0.945
	Smith	REST OF KANSAS	01	99	0.936	0.945
	Stafford	REST OF KANSAS	01	99	0.936	0.945
	Stanton	REST OF KANSAS	01	99	0.936	0.945
	Stevens	REST OF KANSAS	01	99	0.936	0.945
	Sumner	REST OF KANSAS	01	99	0.936	0.945
	Thomas	REST OF KANSAS	01	99	0.936	0.945
	Trego	REST OF KANSAS	01	99	0.936	0.945
	Wabaunsee	REST OF KANSAS	01	99	0.936	0.945
	Wallace	REST OF KANSAS	01	99	0.936	0.945
	Washington	REST OF KANSAS	01	99	0.936	0.945
	Wichita	REST OF KANSAS	01	99	0.936	0.945
	Wilson	REST OF KANSAS	01	99	0.936	0.945
	Woodson	REST OF KANSAS	01	99	0.936	0.945
	Wyandotte	KANSAS CITY, KANSAS	05	99	0.982	0.945
KENTUCKY	Adair	REST OF KENTUCKY	03	99	0.895	0.921
	Allen	REST OF KENTUCKY	03	99	0.895	0.921
	* Anderson	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Anderson	REST OF KENTUCKY	03	99	0.895	0.921
	Ballard	REST OF KENTUCKY	03	99	0.895	0.921
	* Barren	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Barren	REST OF KENTUCKY	03	99	0.895	0.921
	Bath	REST OF KENTUCKY	03	99	0.895	0.921
	* Bell	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Bell	REST OF KENTUCKY	03	99	0.895	0.921
	* Boone	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Boone	REST OF KENTUCKY	03	99	0.895	0.921
	* Bourbon	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
*	Bourbon	REST OF KENTUCKY	03	99	0.895	0.921
*	Boyd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Boyd	REST OF KENTUCKY	03	99	0.895	0.921
*	Boyle	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Boyle	REST OF KENTUCKY	03	99	0.895	0.921
	Bracken	REST OF KENTUCKY	03	99	0.895	0.921
	Breathitt	REST OF KENTUCKY	03	99	0.895	0.921
	Breckinridge	REST OF KENTUCKY	03	99	0.895	0.921
*	Bullitt	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Bullitt	REST OF KENTUCKY	03	99	0.895	0.921
	Butler	REST OF KENTUCKY	03	99	0.895	0.921
	Caldwell	REST OF KENTUCKY	03	99	0.895	0.921
*	Calloway	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Calloway	REST OF KENTUCKY	03	99	0.895	0.921
*	Campbell	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Campbell	REST OF KENTUCKY	03	99	0.895	0.921
	Carlisle	REST OF KENTUCKY	03	99	0.895	0.921
	Carroll	REST OF KENTUCKY	03	99	0.895	0.921
*	Carter	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Carter	REST OF KENTUCKY	03	99	0.895	0.921
	Casey	REST OF KENTUCKY	03	99	0.895	0.921
*	Christian	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Christian	REST OF KENTUCKY	03	99	0.895	0.921
*	Clark	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Clark	REST OF KENTUCKY	03	99	0.895	0.921
	Clay	REST OF KENTUCKY	03	99	0.895	0.921
	Clinton	REST OF KENTUCKY	03	99	0.895	0.921
	Crittenden	REST OF KENTUCKY	03	99	0.895	0.921
	Cumberland	REST OF KENTUCKY	03	99	0.895	0.921
*	Daviess	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Daviess	REST OF KENTUCKY	03	99	0.895	0.921
	Edmonson	REST OF KENTUCKY	03	99	0.895	0.921
	Elliott	REST OF KENTUCKY	03	99	0.895	0.921
	Estill	REST OF KENTUCKY	03	99	0.895	0.921
	Fayette	LEXINGTON & LOUISVILLE, KY	01	99	0.946	0.921
	Fleming	REST OF KENTUCKY	03	99	0.895	0.921
*	Floyd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Floyd	REST OF KENTUCKY	03	99	0.895	0.921
*	Franklin	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Franklin	REST OF KENTUCKY	03	99	0.895	0.921
	Fulton	REST OF KENTUCKY	03	99	0.895	0.921
	Gallatin	REST OF KENTUCKY	03	99	0.895	0.921
*	Garrard	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Garrard	REST OF KENTUCKY	03	99	0.895	0.921
	Grant	REST OF KENTUCKY	03	99	0.895	0.921
*	Graves	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Graves	REST OF KENTUCKY	03	99	0.895	0.921
	Grayson	REST OF KENTUCKY	03	99	0.895	0.921
	Green	REST OF KENTUCKY	03	99	0.895	0.921
*	Greenup	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Greenup	REST OF KENTUCKY	03	99	0.895	0.921
	Hancock	REST OF KENTUCKY	03	99	0.895	0.921
*	Hardin	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Hardin	REST OF KENTUCKY	03	99	0.895	0.921
*	Harlan	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Harlan	REST OF KENTUCKY	03	99	0.895	0.921
	Harrison	REST OF KENTUCKY	03	99	0.895	0.921
	Hart	REST OF KENTUCKY	03	99	0.895	0.921
*	Henderson	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Henderson	REST OF KENTUCKY	03	99	0.895	0.921
	Henry	REST OF KENTUCKY	03	99	0.895	0.921
	Hickman	REST OF KENTUCKY	03	99	0.895	0.921
*	Hopkins	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Hopkins	REST OF KENTUCKY	03	99	0.895	0.921
	Jackson	REST OF KENTUCKY	03	99	0.895	0.921
*	Jefferson	LEXINGTON & LOUISVILLE, KY	01	99	0.946	0.921
*	Jefferson	REST OF KENTUCKY	03	99	0.895	0.921
*	Jessamine	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Jessamine	REST OF KENTUCKY	03	99	0.895	0.921
	Johnson	REST OF KENTUCKY	03	99	0.895	0.921

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
*	Kenton	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Kenton	REST OF KENTUCKY	03	99	0.895	0.921
	Knott	REST OF KENTUCKY	03	99	0.895	0.921
	Knox	REST OF KENTUCKY	03	99	0.895	0.921
	Larue	REST OF KENTUCKY	03	99	0.895	0.921
	Laurel	REST OF KENTUCKY	03	99	0.895	0.921
*	Lawrence	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Lawrence	REST OF KENTUCKY	03	99	0.895	0.921
	Lee	REST OF KENTUCKY	03	99	0.895	0.921
	Leslie	REST OF KENTUCKY	03	99	0.895	0.921
*	Letcher	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Letcher	REST OF KENTUCKY	03	99	0.895	0.921
	Lewis	REST OF KENTUCKY	03	99	0.895	0.921
*	Lincoln	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Lincoln	REST OF KENTUCKY	03	99	0.895	0.921
	Livingston	REST OF KENTUCKY	03	99	0.895	0.921
	Logan	REST OF KENTUCKY	03	99	0.895	0.921
	Lyon	REST OF KENTUCKY	03	99	0.895	0.921
*	Madison	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Madison	REST OF KENTUCKY	03	99	0.895	0.921
	Magoffin	REST OF KENTUCKY	03	99	0.895	0.921
	Marion	REST OF KENTUCKY	03	99	0.895	0.921
	Marshall	REST OF KENTUCKY	03	99	0.895	0.921
	Martin	REST OF KENTUCKY	03	99	0.895	0.921
	Mason	REST OF KENTUCKY	03	99	0.895	0.921
*	McCracken	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	McCracken	REST OF KENTUCKY	03	99	0.895	0.921
	McCreary	REST OF KENTUCKY	03	99	0.895	0.921
	McLean	REST OF KENTUCKY	03	99	0.895	0.921
	Meade	REST OF KENTUCKY	03	99	0.895	0.921
	Menifee	REST OF KENTUCKY	03	99	0.895	0.921
	Mercer	REST OF KENTUCKY	03	99	0.895	0.921
	Metcalfe	REST OF KENTUCKY	03	99	0.895	0.921
	Monroe	REST OF KENTUCKY	03	99	0.895	0.921
*	Montgomery	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Montgomery	REST OF KENTUCKY	03	99	0.895	0.921
	Morgan	REST OF KENTUCKY	03	99	0.895	0.921
	Muhlenberg	REST OF KENTUCKY	03	99	0.895	0.921
*	Nelson	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Nelson	REST OF KENTUCKY	03	99	0.895	0.921
*	Nicholas	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Nicholas	REST OF KENTUCKY	03	99	0.895	0.921
	Ohio	REST OF KENTUCKY	03	99	0.895	0.921
*	Oldham	LEXINGTON & LOUISVILLE, KY	01	99	0.946	0.921
*	Oldham	REST OF KENTUCKY	03	99	0.895	0.921
	Owen	REST OF KENTUCKY	03	99	0.895	0.921
	Owsley	REST OF KENTUCKY	03	99	0.895	0.921
	Pendleton	REST OF KENTUCKY	03	99	0.895	0.921
*	Perry	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Perry	REST OF KENTUCKY	03	99	0.895	0.921
*	Pike	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Pike	REST OF KENTUCKY	03	99	0.895	0.921
*	Powell	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Powell	REST OF KENTUCKY	03	99	0.895	0.921
	Pulaski	REST OF KENTUCKY	03	99	0.895	0.921
	Robertson	REST OF KENTUCKY	03	99	0.895	0.921
	Rockcastle	REST OF KENTUCKY	03	99	0.895	0.921
*	Rowan	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Rowan	REST OF KENTUCKY	03	99	0.895	0.921
	Russell	REST OF KENTUCKY	03	99	0.895	0.921
*	Scott	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Scott	REST OF KENTUCKY	03	99	0.895	0.921
*	Shelby	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Shelby	REST OF KENTUCKY	03	99	0.895	0.921
	Simpson	REST OF KENTUCKY	03	99	0.895	0.921
	Spencer	REST OF KENTUCKY	03	99	0.895	0.921
	Taylor	REST OF KENTUCKY	03	99	0.895	0.921
*	Todd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Todd	REST OF KENTUCKY	03	99	0.895	0.921
	Trigg	REST OF KENTUCKY	03	99	0.895	0.921

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Trimble	REST OF KENTUCKY	03	99	0.895	0.921
*	Union	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Union	REST OF KENTUCKY	03	99	0.895	0.921
*	Warren	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Warren	REST OF KENTUCKY	03	99	0.895	0.921
	Washington	REST OF KENTUCKY	03	99	0.895	0.921
	Wayne	REST OF KENTUCKY	03	99	0.895	0.921
	Webster	REST OF KENTUCKY	03	99	0.895	0.921
	Whitley	REST OF KENTUCKY	03	99	0.895	0.921
	Wolfe	REST OF KENTUCKY	03	99	0.895	0.921
*	Woodford	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Woodford	REST OF KENTUCKY	03	99	0.895	0.921
LOUISIANA	Acadia	REST OF LA	50	99	0.915	0.926
	Allen	REST OF LA	50	99	0.915	0.926
	Ascension	REST OF LA	50	99	0.915	0.926
	Assumption	REST OF LA	50	99	0.915	0.926
	Avoyelles	REST OF LA	50	99	0.915	0.926
	Beauregard	REST OF LA	50	99	0.915	0.926
	Bienville	REST OF LA	50	99	0.915	0.926
	Bossier	SHREVEPORT, LA	02	99	0.935	0.926
	Caddo	SHREVEPORT, LA	02	99	0.935	0.926
	Calcasieu	LAKE CHARLES, LA	04	99	0.941	0.926
	Caldwell	REST OF LA	50	99	0.915	0.926
	Cameron	REST OF LA	50	99	0.915	0.926
	Catahoula	REST OF LA	50	99	0.915	0.926
	Claiborne	REST OF LA	50	99	0.915	0.926
	Concordia	REST OF LA	50	99	0.915	0.926
	De Soto	REST OF LA	50	99	0.915	0.926
	East Baton Rouge	BATON ROUGE, LA	03	99	0.944	0.926
	East Carroll	REST OF LA	50	99	0.915	0.926
	East Feliciana	REST OF LA	50	99	0.915	0.926
	Evangeline	REST OF LA	50	99	0.915	0.926
	Franklin	REST OF LA	50	99	0.915	0.926
	Grant	REST OF LA	50	99	0.915	0.926
	Iberia	LAFAYETTE, LA	06	99	0.921	0.926
	Iberville	REST OF LA	50	99	0.915	0.926
	Jackson	REST OF LA	50	99	0.915	0.926
	Jefferson	NEW ORLEANS, LA	01	01	0.977	0.977
	Jefferson Davis	REST OF LA	50	99	0.915	0.926
	La Salle	REST OF LA	50	99	0.915	0.926
	Lafayette	LAFAYETTE, LA	06	99	0.921	0.926
	Lafourche	REST OF LA	50	99	0.915	0.926
	Lincoln	REST OF LA	50	99	0.915	0.926
	Livingston	REST OF LA	50	99	0.915	0.926
	Madison	REST OF LA	50	99	0.915	0.926
	Morehouse	REST OF LA	50	99	0.915	0.926
	Natchitoches	REST OF LA	50	99	0.915	0.926
	Orleans	NEW ORLEANS, LA	01	01	0.977	0.977
	Ouachita	MONROE, LA	05	99	0.918	0.926
	Plaquemines	NEW ORLEANS, LA	01	01	0.977	0.977
	Pointe Coupee	REST OF LA	50	99	0.915	0.926
	Rapides	ALEXANDRIA, LA	07	99	0.917	0.926
	Red River	REST OF LA	50	99	0.915	0.926
	Richland	REST OF LA	50	99	0.915	0.926
	Sabine	REST OF LA	50	99	0.915	0.926
	St. Bernard	NEW ORLEANS, LA	01	01	0.977	0.977
	St. Charles	REST OF LA	50	99	0.915	0.926
	St. Helena	REST OF LA	50	99	0.915	0.926
	St. James	REST OF LA	50	99	0.915	0.926
	St. John the Baptis	REST OF LA	50	99	0.915	0.926
	St. Landry	REST OF LA	50	99	0.915	0.926
	St. Martin	LAFAYETTE, LA	06	99	0.921	0.926
	St. Mary	REST OF LA	50	99	0.915	0.926
	St. Tammany	REST OF LA	50	99	0.915	0.926
	Tangipahoa	REST OF LA	50	99	0.915	0.926
	Tensas	REST OF LA	50	99	0.915	0.926
	Terrebonne	REST OF LA	50	99	0.915	0.926
	Union	REST OF LA	50	99	0.915	0.926
	Vermilion	REST OF LA	50	99	0.915	0.926

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Vernon	REST OF LA	50	99	0.915	0.926
	Washington	REST OF LA	50	99	0.915	0.926
	Webster	REST OF LA	50	99	0.915	0.926
	West Baton Rouge	BATON ROUGE, LA	03	99	0.944	0.926
	West Carroll	REST OF LA	50	99	0.915	0.926
	West Feliciana	REST OF LA	50	99	0.915	0.926
	Winn	REST OF LA	50	99	0.915	0.926
MAINE	Androscoggin	CENTRAL MAINE	02	99	0.938	0.937
	Aroostook	NORTHERN MAINE	01	99	0.936	0.937
	Cumberland	SOUTHERN MAINE	03	03	0.992	0.992
	Franklin	NORTHERN MAINE	01	99	0.936	0.937
	Hancock	NORTHERN MAINE	01	99	0.936	0.937
	Kennebec	CENTRAL MAINE	02	99	0.938	0.937
	Knox	CENTRAL MAINE	02	99	0.938	0.937
	Lincoln	CENTRAL MAINE	02	99	0.938	0.937
	Oxford	CENTRAL MAINE	02	99	0.938	0.937
	Penobscot	NORTHERN MAINE	01	99	0.936	0.937
	Piscataquis	NORTHERN MAINE	01	99	0.936	0.937
	Sagadahoc	CENTRAL MAINE	02	99	0.938	0.937
	Somerset	NORTHERN MAINE	01	99	0.936	0.937
	Waldo	NORTHERN MAINE	01	99	0.936	0.937
	Washington	NORTHERN MAINE	01	99	0.936	0.937
	York	SOUTHERN MAINE	03	03	0.992	0.992
MARYLAND	Allegany	WESTERN MD	02	99	0.955	0.964
	Anne Arundel	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Baltimore	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Baltimore City	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Calvert	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Caroline	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Carroll	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Cecil	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Charles	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Dorchester	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Frederick	WESTERN MD	02	99	0.955	0.964
	Garrett	WESTERN MD	02	99	0.955	0.964
	Harford	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Howard	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Kent	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Queen Anne's	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Somerset	SOUTH & E. SHORE MD	03	99	0.974	0.964
	St. Mary's	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Talbot	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Washington	WESTERN MD	02	99	0.955	0.964
	Wicomico	SOUTH & E. SHORE MD	03	99	0.974	0.964
	Worcester	SOUTH & E. SHORE MD	03	99	0.974	0.964
MASSACHUSETTS	Barnstable	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Berkshire	URBAN MASS	01	99	1.084	1.041
	* Berkshire	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Bristol	URBAN MASS	01	99	1.084	1.041
	* Bristol	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	Dukes	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Essex	URBAN MASS	01	99	1.084	1.041
	* Essex	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	Franklin	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Hampden	URBAN MASS	01	99	1.084	1.041
	* Hampden	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Hampshire	URBAN MASS	01	99	1.084	1.041
	* Hampshire	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Middlesex	URBAN MASS	01	01	1.084	1.108
	* Middlesex	MASS SUBURBS/RURAL CITIES	02	01	1.048	1.108
	Nantucket	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	* Norfolk	URBAN MASS	01	01	1.084	1.108
	* Norfolk	MASS SUBURBS/RURAL CITIES	02	01	1.048	1.108
	* Plymouth	URBAN MASS	01	99	1.084	1.041
	* Plymouth	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041
	Suffolk	URBAN MASS	01	01	1.084	1.108
	* Worcester	URBAN MASS	01	99	1.084	1.041
	* Worcester	MASS SUBURBS/RURAL CITIES	02	99	1.048	1.041

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
MICHIGAN†	Alcona	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Alger	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Allegan	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Alpena	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Antrim	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Arenac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Baraga	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Barry	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Bay	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Benzie	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Berrien	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Branch	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Calhoun	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Cass	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Charlevoix	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Cheboygan	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Chippewa	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Clare	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Clinton	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Crawford	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Delta	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Dickinson	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Eaton	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Emmet	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Genesee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gladwin	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gogebic	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Grand Traverse	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gratiot	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Hillsdale	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Houghton	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Huron	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ingham	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ionia	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Iosco	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Iron	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Isabella	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Jackson	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kalamazoo	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kalkaska	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kent	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Keweenaw	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lake	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lapeer	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Leelanau	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lenawee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Livingston	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Luce	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mackinac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Macomb	DETROIT, MI	01	01	1.137	1.137
	Manistee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Marquette	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mason	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mecosta	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Menominee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Midland	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Missaukee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Monroe	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Montcalm	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Montmorency	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Muskegon	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Newaygo	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Oakland	DETROIT, MI	01	01	1.137	1.137
	Oceana	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ogemaw	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ontonagon	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Osceola	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Oscoda	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Otsego	MICHIGAN, NOT DETROIT	02	99	1.013	1.012

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Otsawa	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Presque Isle	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Roscommon	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Saginaw	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Sanilac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Schoolcraft	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Shiawassee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	St. Clair	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	St. Joseph	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Tuscola	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Van Buren	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Washtenaw	DETROIT, MI	01	01	1.137	1.137
	Wayne	DETROIT, MI	01	01	1.137	1.137
	Wexford	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
MINNESOTA	STATEWIDE	STATEWIDE	00	00	0.961	0.961
MISSISSIPPI	Adams	REST OF MISSISSIPPI	01	99	0.883	0.899
	Alcorn	REST OF MISSISSIPPI	01	99	0.883	0.899
	Amite	REST OF MISSISSIPPI	01	99	0.883	0.899
	Attala	REST OF MISSISSIPPI	01	99	0.883	0.899
	Benton	REST OF MISSISSIPPI	01	99	0.883	0.899
	Bolivar	REST OF MISSISSIPPI	01	99	0.883	0.899
	Calhoun	REST OF MISSISSIPPI	01	99	0.883	0.899
	Carroll	REST OF MISSISSIPPI	01	99	0.883	0.899
	Chickasaw	REST OF MISSISSIPPI	01	99	0.883	0.899
	Choctaw	REST OF MISSISSIPPI	01	99	0.883	0.899
	Claiborne	REST OF MISSISSIPPI	01	99	0.883	0.899
	Clarke	REST OF MISSISSIPPI	01	99	0.883	0.899
	Clay	REST OF MISSISSIPPI	01	99	0.883	0.899
	Coahoma	REST OF MISSISSIPPI	01	99	0.883	0.899
	Copiah	REST OF MISSISSIPPI	01	99	0.883	0.899
	Covington	REST OF MISSISSIPPI	01	99	0.883	0.899
	DeSoto	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Forrest	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Forrest	URBAN MISSISSIPPI	02	99	0.913	0.899
	Franklin	REST OF MISSISSIPPI	01	99	0.883	0.899
	George	REST OF MISSISSIPPI	01	99	0.883	0.899
	Greene	REST OF MISSISSIPPI	01	99	0.883	0.899
	Grenada	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Hancock	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Hancock	URBAN MISSISSIPPI	02	99	0.913	0.899
*	Harrison	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Harrison	URBAN MISSISSIPPI	02	99	0.913	0.899
*	Hinds	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Hinds	URBAN MISSISSIPPI	02	99	0.913	0.899
	Holmes	REST OF MISSISSIPPI	01	99	0.883	0.899
	Humphreys	REST OF MISSISSIPPI	01	99	0.883	0.899
	Issaquena	REST OF MISSISSIPPI	01	99	0.883	0.899
	Itawamba	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Jackson	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Jackson	URBAN MISSISSIPPI	02	99	0.913	0.899
	Jasper	REST OF MISSISSIPPI	01	99	0.883	0.899
	Jefferson	REST OF MISSISSIPPI	01	99	0.883	0.899
	Jefferson Davis	REST OF MISSISSIPPI	01	99	0.883	0.899
	Jones	REST OF MISSISSIPPI	01	99	0.883	0.899
	Kemper	REST OF MISSISSIPPI	01	99	0.883	0.899
	Lafayette	REST OF MISSISSIPPI	01	99	0.883	0.899
	Lamar	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Lauderdale	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Lauderdale	URBAN MISSISSIPPI	02	99	0.913	0.899
	Lawrence	REST OF MISSISSIPPI	01	99	0.883	0.899
	Leake	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Lee	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Lee	URBAN MISSISSIPPI	02	99	0.913	0.899
	Leflore	REST OF MISSISSIPPI	01	99	0.883	0.899
	Lincoln	REST OF MISSISSIPPI	01	99	0.883	0.899
	Lowndes	REST OF MISSISSIPPI	01	99	0.883	0.899
	Madison	REST OF MISSISSIPPI	01	99	0.883	0.899
	Marion	REST OF MISSISSIPPI	01	99	0.883	0.899

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State		County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
		Marshall	REST OF MISSISSIPPI	01	99	0.883	0.899
		Monroe	REST OF MISSISSIPPI	01	99	0.883	0.899
		Montgomery	REST OF MISSISSIPPI	01	99	0.883	0.899
		Neshoba	REST OF MISSISSIPPI	01	99	0.883	0.899
		Newton	REST OF MISSISSIPPI	01	99	0.883	0.899
		Noxubee	REST OF MISSISSIPPI	01	99	0.883	0.899
		Oktibbeha	REST OF MISSISSIPPI	01	99	0.883	0.899
		Panola	REST OF MISSISSIPPI	01	99	0.883	0.899
		Pearl River	REST OF MISSISSIPPI	01	99	0.883	0.899
		Perry	REST OF MISSISSIPPI	01	99	0.883	0.899
		Pike	REST OF MISSISSIPPI	01	99	0.883	0.899
		Pontotoc	REST OF MISSISSIPPI	01	99	0.883	0.899
		Prentiss	REST OF MISSISSIPPI	01	99	0.883	0.899
		Quitman	REST OF MISSISSIPPI	01	99	0.883	0.899
	*	Rankin	REST OF MISSISSIPPI	01	99	0.883	0.899
	*	Rankin	URBAN MISSISSIPPI	02	99	0.913	0.899
		Scott	REST OF MISSISSIPPI	01	99	0.883	0.899
		Sharkey	REST OF MISSISSIPPI	01	99	0.883	0.899
		Simpson	REST OF MISSISSIPPI	01	99	0.883	0.899
		Smith	REST OF MISSISSIPPI	01	99	0.883	0.899
		Stone	REST OF MISSISSIPPI	01	99	0.883	0.899
		Sunflower	REST OF MISSISSIPPI	01	99	0.883	0.899
		Tallahatchie	REST OF MISSISSIPPI	01	99	0.883	0.899
		Tate	REST OF MISSISSIPPI	01	99	0.883	0.899
		Tippah	REST OF MISSISSIPPI	01	99	0.883	0.899
		Tishomingo	REST OF MISSISSIPPI	01	99	0.883	0.899
		Tunica	REST OF MISSISSIPPI	01	99	0.883	0.899
		Union	REST OF MISSISSIPPI	01	99	0.883	0.899
		Walthall	REST OF MISSISSIPPI	01	99	0.883	0.899
		Warren	REST OF MISSISSIPPI	01	99	0.883	0.899
		Washington	REST OF MISSISSIPPI	01	99	0.883	0.899
		Wayne	REST OF MISSISSIPPI	01	99	0.883	0.899
		Webster	REST OF MISSISSIPPI	01	99	0.883	0.899
		Wilkinson	REST OF MISSISSIPPI	01	99	0.883	0.899
		Winston	REST OF MISSISSIPPI	01	99	0.883	0.899
		Yalobusha	REST OF MISSISSIPPI	01	99	0.883	0.899
		Yazoo	REST OF MISSISSIPPI	01	99	0.883	0.899
MISSOURI	*	Adair	SM E. CITIES, MO	02	99	0.897	0.911
	*	Adair	REST OF MO	03	99	0.899	0.911
		Andrew	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Atchison	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Audrain	REST OF MO	03	99	0.899	0.911
		Barry	REST OF MO	03	99	0.899	0.911
		Barton	REST OF MO	03	99	0.899	0.911
		Bates	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Benton	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Bollinger	REST OF MO	03	99	0.899	0.911
	*	Boone	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
	*	Boone	REST OF MO	03	99	0.899	0.911
		Buchanan	ST JOSEPH, MO	01	99	0.920	0.911
	*	Butler	SM E. CITIES, MO	02	99	0.897	0.911
	*	Butler	REST OF MO	03	99	0.899	0.911
		Caldwell	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Callaway	REST OF MO	03	99	0.899	0.911
		Camden	REST OF MO	03	99	0.899	0.911
	*	Cape Girardeau	SM E. CITIES, MO	02	99	0.897	0.911
	*	Cape Girardeau	REST OF MO	03	99	0.899	0.911
		Carroll	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Carter	REST OF MO	03	99	0.899	0.911
		Cass	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Cedar	REST OF MO	03	99	0.899	0.911
		Charlton	REST OF MO	03	99	0.899	0.911
		Christian	REST OF MO	03	99	0.899	0.911
		Clark	REST OF MO	03	99	0.899	0.911
		Clay	N K.C. (CLAY/PLATTE), MO	02	01	0.963	0.963
		Clinton	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	*	Cole	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
	*	Cole	REST OF MO	03	99	0.899	0.911
		Cooper	REST OF MO	03	99	0.899	0.911

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Crawford	REST OF MO	03	99	0.899	0.911
	Dade	REST OF MO	03	99	0.899	0.911
	Dallas	REST OF MO	03	99	0.899	0.911
	Daviess	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	DeKalb	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Dent	REST OF MO	03	99	0.899	0.911
	Douglas	REST OF MO	03	99	0.899	0.911
	Dunklin	REST OF MO	03	99	0.899	0.911
	Franklin	REST OF MO	03	99	0.899	0.911
	Gasconade	REST OF MO	03	99	0.899	0.911
	Gentry	RURAL NW COUNTIES, MO	06	99	0.913	0.911
*	Greene	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
*	Greene	REST OF MO	03	99	0.899	0.911
	Grundy	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Harrison	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Henry	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Hickory	REST OF MO	03	99	0.899	0.911
	Holt	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Howard	REST OF MO	03	99	0.899	0.911
	Howell	REST OF MO	03	99	0.899	0.911
	Iron	REST OF MO	03	99	0.899	0.911
	Jackson	K.C. (JACKSON CNTY), MO	03	01	0.963	0.963
*	Jasper	SM E. CITIES, MO	02	99	0.897	0.911
*	Jasper	REST OF MO	03	99	0.899	0.911
	Jefferson	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.964
	Johnson	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Knox	REST OF MO	03	99	0.899	0.911
	Laclede	REST OF MO	03	99	0.899	0.911
	Lafayette	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Lawrence	REST OF MO	03	99	0.899	0.911
	Lewis	REST OF MO	03	99	0.899	0.911
	Lincoln	REST OF MO	03	99	0.899	0.911
	Linn	REST OF MO	03	99	0.899	0.911
	Livingston	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Macon	REST OF MO	03	99	0.899	0.911
	Madison	REST OF MO	03	99	0.899	0.911
	Maries	REST OF MO	03	99	0.899	0.911
*	Marion	SM E. CITIES, MO	02	99	0.897	0.911
*	Marion	REST OF MO	03	99	0.899	0.911
	McDonald	REST OF MO	03	99	0.899	0.911
	Mercer	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Miller	REST OF MO	03	99	0.899	0.911
	Mississippi	REST OF MO	03	99	0.899	0.911
	Moniteau	REST OF MO	03	99	0.899	0.911
	Monroe	REST OF MO	03	99	0.899	0.911
	Montgomery	REST OF MO	03	99	0.899	0.911
	Morgan	REST OF MO	03	99	0.899	0.911
	New Madrid	REST OF MO	03	99	0.899	0.911
	Newton	REST OF MO	03	99	0.899	0.911
	Nodaway	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Oregon	REST OF MO	03	99	0.899	0.911
	Osage	REST OF MO	03	99	0.899	0.911
	Ozark	REST OF MO	03	99	0.899	0.911
	Pemiscot	REST OF MO	03	99	0.899	0.911
	Perry	REST OF MO	03	99	0.899	0.911
	Pettis	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Phelps	REST OF MO	03	99	0.899	0.911
	Pike	REST OF MO	03	99	0.899	0.911
	Platte	N K.C. (CLAY/PLATTE), MO	02	01	0.963	0.963
	Polk	REST OF MO	03	99	0.899	0.911
	Pulaski	REST OF MO	03	99	0.899	0.911
	Putnam	REST OF MO	03	99	0.899	0.911
	Ralls	REST OF MO	03	99	0.899	0.911
	Randolph	REST OF MO	03	99	0.899	0.911
	Ray	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Reynolds	REST OF MO	03	99	0.899	0.911
	Ripley	REST OF MO	03	99	0.899	0.911
	Saline	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Schuyler	REST OF MO	03	99	0.899	0.911
	Scotland	REST OF MO	03	99	0.899	0.911

ADDENDUM B

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State		County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	*	Scott	SM E. CITIES, MO	02	99	0.867	0.911
	*	Scott	REST OF MO	03	99	0.899	0.911
		Shannon	REST OF MO	03	99	0.899	0.911
		Shelby	REST OF MO	03	99	0.899	0.911
		St. Charles	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.964
		St. Clair	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		St. Francois	REST OF MO	03	99	0.899	0.911
		St. Louis	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.964
		St. Louis City	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.964
		Ste. Genevieve	REST OF MO	03	99	0.899	0.911
		Stoddard	REST OF MO	03	99	0.899	0.911
		Stone	REST OF MO	03	99	0.899	0.911
		Sullivan	REST OF MO	03	99	0.899	0.911
		Taney	REST OF MO	03	99	0.899	0.911
		Texas	REST OF MO	03	99	0.899	0.911
		Vernon	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Warren	REST OF MO	03	99	0.899	0.911
		Washington	REST OF MO	03	99	0.899	0.911
		Wayne	REST OF MO	03	99	0.899	0.911
		Webster	REST OF MO	03	99	0.899	0.911
		Worth	RURAL NW COUNTIES, MO	06	99	0.913	0.911
		Wright	REST OF MO	03	99	0.899	0.911
MONTANA		STATEWIDE	STATEWIDE	01	01	0.907	0.907
NEBRASKA		STATEWIDE	STATEWIDE	00	00	0.894	0.894
NEVADA		Carson City	RENO, ET AL. (CITIES), NV	02	99	1.013	1.010
		Churchill	REST OF NEVADA	99	99	0.998	1.010
	*	Clark	LAS VEGAS, ET AL. (CITIES), NV	01	99	1.010	1.010
	*	Clark	REST OF NEVADA	99	99	0.998	1.010
		Douglas	REST OF NEVADA	99	99	0.998	1.010
	*	Elko	ELKO & ELY (CITIES), NV	03	99	0.980	1.010
	*	Elko	REST OF NEVADA	99	99	0.998	1.010
		Esmeralda	REST OF NEVADA	99	99	0.998	1.010
		Eureka	REST OF NEVADA	99	99	0.998	1.010
		Humboldt	REST OF NEVADA	99	99	0.998	1.010
		Lander	REST OF NEVADA	99	99	0.998	1.010
		Lincoln	REST OF NEVADA	99	99	0.998	1.010
		Lyon	REST OF NEVADA	99	99	0.998	1.010
		Mineral	REST OF NEVADA	99	99	0.998	1.010
		Nye	REST OF NEVADA	99	99	0.998	1.010
		Pershing	REST OF NEVADA	99	99	0.998	1.010
		Storey	REST OF NEVADA	99	99	0.998	1.010
	*	Washoe	RENO, ET AL. (CITIES), NV	02	99	1.013	1.010
	*	Washoe	REST OF NEVADA	99	99	0.998	1.010
	*	White Pine	ELKO & ELY (CITIES), NV	03	99	0.980	1.010
	*	White Pine	REST OF NEVADA	99	99	0.998	1.010
NEW HAMPSHIRE		STATEWIDE	STATEWIDE	40	40	1.003	1.003
NEW JERSEY		Atlantic	SOUTHERN NJ	03	99	1.035	1.051
		Bergen	NORTHERN NJ	01	01	1.109	1.109
		Burlington	MIDDLE NJ	02	99	1.062	1.051
		Camden	SOUTHERN NJ	03	99	1.035	1.051
		Cape May	SOUTHERN NJ	03	99	1.035	1.051
		Cumberland	SOUTHERN NJ	03	99	1.035	1.051
		Essex	NORTHERN NJ	01	01	1.109	1.109
		Gloucester	SOUTHERN NJ	03	99	1.035	1.051
		Hudson	NORTHERN NJ	01	01	1.109	1.109
		Hunterdon	NORTHERN NJ	01	01	1.109	1.109
		Mercer	MIDDLE NJ	02	99	1.062	1.051
		Middlesex	NORTHERN NJ	01	01	1.109	1.109
		Monmouth	MIDDLE NJ	02	99	1.062	1.051
		Morris	NORTHERN NJ	01	01	1.109	1.109
		Ocean	MIDDLE NJ	02	99	1.062	1.051
		Passaic	NORTHERN NJ	01	01	1.109	1.109
		Salem	SOUTHERN NJ	03	99	1.035	1.051
		Somerset	NORTHERN NJ	01	01	1.109	1.109
		Sussex	NORTHERN NJ	01	01	1.109	1.109

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State		County	January 1, 1996 Locality Name	Locality Number		GAF	
				1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
		Union	NORTHERN NJ	01	01	1.109	1.109
		Warren	NORTHERN NJ	01	01	1.109	1.109
NEW MEXICO		STATEWIDE	STATEWIDE	05	05	0.937	0.937
NEW YORK	*	Albany	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Albany	REST OF NEW YORK	04	99	0.960	0.973
		Allegany	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
		Bronx	NYC SUBURBS/LONG I., NY	02	02	1.170	1.170
	*	Broome	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Broome	REST OF NEW YORK	04	99	0.960	0.973
		Cattaraugus	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
		Cayuga	REST OF NEW YORK	04	99	0.960	0.973
		Chautauqua	REST OF NEW YORK	04	99	0.960	0.973
		Chemung	REST OF NEW YORK	04	99	0.960	0.973
		Chenango	REST OF NEW YORK	04	99	0.960	0.973
		Clinton	REST OF NEW YORK	04	99	0.960	0.973
		Columbia	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Cortland	REST OF NEW YORK	04	99	0.960	0.973
		Delaware	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Dutchess	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Erie	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
		Essex	REST OF NEW YORK	04	99	0.960	0.973
		Franklin	REST OF NEW YORK	04	99	0.960	0.973
		Fulton	REST OF NEW YORK	04	99	0.960	0.973
		Genesee	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
		Greene	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Hamilton	REST OF NEW YORK	04	99	0.960	0.973
		Herkimer	REST OF NEW YORK	04	99	0.960	0.973
		Jefferson	REST OF NEW YORK	04	99	0.960	0.973
		Kings	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
		Lewis	REST OF NEW YORK	04	99	0.960	0.973
		Livingston	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
		Madison	REST OF NEW YORK	04	99	0.960	0.973
		Monroe	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
		Montgomery	REST OF NEW YORK	04	99	0.960	0.973
		Nassau	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
		New York	MANHATTAN, NY	01	01	1.225	1.225
		Niagara	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
	*	Oneida	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Oneida	REST OF NEW YORK	04	99	0.960	0.973
	*	Onondaga	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Onondaga	REST OF NEW YORK	04	99	0.960	0.973
		Ontario	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
		Orange	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Orleans	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
		Oswego	REST OF NEW YORK	04	99	0.960	0.973
	*	Otsego	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Otsego	REST OF NEW YORK	04	99	0.960	0.973
		Putnam	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Queens	QUEENS, NY	04	04	1.163	1.163
	*	Rensselaer	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Rensselaer	REST OF NEW YORK	04	99	0.960	0.973
		Richmond	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
		Rockland	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	*	Saratoga	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Saratoga	REST OF NEW YORK	04	99	0.960	0.973
	*	Schenectady	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	Schenectady	REST OF NEW YORK	04	99	0.960	0.973
		Schoharie	REST OF NEW YORK	04	99	0.960	0.973
		Schuyler	REST OF NEW YORK	04	99	0.960	0.973
		Seneca	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	*	St. Lawrence	N. CENTRAL CITIES, NY	03	99	0.981	0.973
	*	St. Lawrence	REST OF NEW YORK	04	99	0.960	0.973
		Steuben	REST OF NEW YORK	04	99	0.960	0.973
		Suffolk	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
		Sullivan	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
		Tioga	REST OF NEW YORK	04	99	0.960	0.973
		Tompkins	REST OF NEW YORK	04	99	0.960	0.973
		Ulster	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Warren	REST OF NEW YORK	04	99	0.960	0.973
	Washington	REST OF NEW YORK	04	99	0.960	0.973
	Wayne	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	Westchester	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	Wyoming	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
	Yates	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
NORTH CAROLINA	STATEWIDE	STATEWIDE	00	00	0.924	0.924
NORTH DAKOTA	STATEWIDE	STATEWIDE	01	01	0.898	0.898
OHIO	STATEWIDE	STATEWIDE	00	00	0.973	0.973
OKLAHOMA	STATEWIDE	STATEWIDE	00	00	0.910	0.910
OREGON	Baker	REST OF OREGON	99	99	0.924	0.933
	* Benton	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Benton	REST OF OREGON	99	99	0.924	0.933
	* Clackamas	PORTLAND, ET AL. (CITIES), OR	01	01	0.981	0.981
	* Clackamas	REST OF OREGON	99	01	0.924	0.981
	Clatsop	REST OF OREGON	99	99	0.924	0.933
	Columbia	REST OF OREGON	99	99	0.924	0.933
	* Coos	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Coos	REST OF OREGON	99	99	0.924	0.933
	Crook	REST OF OREGON	99	99	0.924	0.933
	Curry	REST OF OREGON	99	99	0.924	0.933
	Deschutes	REST OF OREGON	99	99	0.924	0.933
	* Douglas	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Douglas	REST OF OREGON	99	99	0.924	0.933
	Gilliam	REST OF OREGON	99	99	0.924	0.933
	Grant	REST OF OREGON	99	99	0.924	0.933
	Harney	REST OF OREGON	99	99	0.924	0.933
	Hood River	REST OF OREGON	99	99	0.924	0.933
	* Jackson	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Jackson	REST OF OREGON	99	99	0.924	0.933
	Jefferson	REST OF OREGON	99	99	0.924	0.933
	* Josephine	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Josephine	REST OF OREGON	99	99	0.924	0.933
	* Klamath	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Klamath	REST OF OREGON	99	99	0.924	0.933
	Lake	REST OF OREGON	99	99	0.924	0.933
	* Lane	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Lane	REST OF OREGON	99	99	0.924	0.933
	Lincoln	REST OF OREGON	99	99	0.924	0.933
	* Linn	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Linn	REST OF OREGON	99	99	0.924	0.933
	Malheur	REST OF OREGON	99	99	0.924	0.933
	* Marion	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Marion	REST OF OREGON	99	99	0.924	0.933
	Morrow	REST OF OREGON	99	99	0.924	0.933
	* Multnomah	PORTLAND, ET AL. (CITIES), OR	01	01	0.981	0.981
	* Multnomah	REST OF OREGON	99	01	0.924	0.981
	Polk	REST OF OREGON	99	99	0.924	0.933
	Sherman	REST OF OREGON	99	99	0.924	0.933
	Tillamook	REST OF OREGON	99	99	0.924	0.933
	Umatilla	REST OF OREGON	99	99	0.924	0.933
	Union	REST OF OREGON	99	99	0.924	0.933
	Wallowa	REST OF OREGON	99	99	0.924	0.933
	Wasco	REST OF OREGON	99	99	0.924	0.933
	* Washington	PORTLAND, ET AL. (CITIES), OR	01	01	0.981	0.981
	* Washington	REST OF OREGON	99	01	0.924	0.981
	Wheeler	REST OF OREGON	99	99	0.924	0.933
	Yamhill	REST OF OREGON	99	99	0.924	0.933
PENNSYLVANIA	Adams	SM PA CITIES	03	99	0.944	0.951
	* Allegheny	PHILLY/PITT MED SCHOOLS/HOSPS	01	99	1.041	0.951
	* Allegheny	LG PA CITIES	02	99	1.001	0.951
	Armstrong	REST OF PA	04	99	0.930	0.951
	Beaver	LG PA CITIES	02	99	1.001	0.951
	Bedford	REST OF PA	04	99	0.930	0.951

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Berks	LG PA CITIES	02	99	1.001	0.951
	Blair	REST OF PA	04	99	0.930	0.951
	Bradford	REST OF PA	04	99	0.930	0.951
	Bucks	LG PA CITIES	02	01	1.001	1.066
	Butler	SM PA CITIES	03	99	0.944	0.951
*	Cambria	SM PA CITIES	03	99	0.944	0.951
*	Cambria	REST OF PA	04	99	0.930	0.951
	Cameron	REST OF PA	04	99	0.930	0.951
	Carbon	SM PA CITIES	03	99	0.944	0.951
*	Centre	SM PA CITIES	03	99	0.944	0.951
*	Centre	REST OF PA	04	99	0.930	0.951
	Chester	LG PA CITIES	02	01	1.001	1.066
	Clarion	REST OF PA	04	99	0.930	0.951
	Clearfield	REST OF PA	04	99	0.930	0.951
	Clinton	REST OF PA	04	99	0.930	0.951
	Columbia	SM PA CITIES	03	99	0.944	0.951
	Crawford	SM PA CITIES	03	99	0.944	0.951
	Cumberland	SM PA CITIES	03	99	0.944	0.951
	Dauphin	SM PA CITIES	03	99	0.944	0.951
	Delaware	LG PA CITIES	02	01	1.001	1.066
	Elk	REST OF PA	04	99	0.930	0.951
	Erie	LG PA CITIES	02	99	1.001	0.951
	Fayette	SM PA CITIES	03	99	0.944	0.951
	Forest	REST OF PA	04	99	0.930	0.951
	Franklin	SM PA CITIES	03	99	0.944	0.951
	Fulton	REST OF PA	04	99	0.930	0.951
	Greene	REST OF PA	04	99	0.930	0.951
	Huntingdon	REST OF PA	04	99	0.930	0.951
	Indiana	REST OF PA	04	99	0.930	0.951
	Jefferson	REST OF PA	04	99	0.930	0.951
	Juniata	REST OF PA	04	99	0.930	0.951
	Lackawanna	LG PA CITIES	02	99	1.001	0.951
	Lancaster	REST OF PA	04	99	0.930	0.951
	Lawrence	SM PA CITIES	03	99	0.944	0.951
	Lebanon	REST OF PA	04	99	0.930	0.951
	Lehigh	LG PA CITIES	02	99	1.001	0.951
	Luzerne	SM PA CITIES	03	99	0.944	0.951
	Lycoming	LG PA CITIES	02	99	1.001	0.951
	Mc Kean	REST OF PA	04	99	0.930	0.951
	Mercer	SM PA CITIES	03	99	0.944	0.951
	Mifflin	REST OF PA	04	99	0.930	0.951
	Monroe	SM PA CITIES	03	99	0.944	0.951
	Montgomery	LG PA CITIES	02	01	1.001	1.066
	Montour	SM PA CITIES	03	99	0.944	0.951
*	Northampton	LG PA CITIES	02	99	1.001	0.951
*	Northampton	SM PA CITIES	03	99	0.944	0.951
	Northumberland	REST OF PA	04	99	0.930	0.951
*	Perry	SM PA CITIES	03	99	0.944	0.951
*	Perry	REST OF PA	04	99	0.930	0.951
	Philadelphia	PHILLY/PITT MED SCHOOLS/HOSPS	01	01	1.041	1.066
	Pike	REST OF PA	04	99	0.930	0.951
	Potter	REST OF PA	04	99	0.930	0.951
*	Schuylkill	SM PA CITIES	03	99	0.944	0.951
*	Schuylkill	REST OF PA	04	99	0.930	0.951
	Snyder	REST OF PA	04	99	0.930	0.951
*	Somerset	SM PA CITIES	03	99	0.944	0.951
*	Somerset	REST OF PA	04	99	0.930	0.951
	Sullivan	REST OF PA	04	99	0.930	0.951
	Susquehanna	REST OF PA	04	99	0.930	0.951
	Tioga	REST OF PA	04	99	0.930	0.951
	Union	REST OF PA	04	99	0.930	0.951
	Venango	SM PA CITIES	03	99	0.944	0.951
	Warren	SM PA CITIES	03	99	0.944	0.951
	Washington	SM PA CITIES	03	99	0.944	0.951
	Wayne	REST OF PA	04	99	0.930	0.951
	Westmoreland	LG PA CITIES	02	99	1.001	0.951
	Wyoming	REST OF PA	04	99	0.930	0.951
	York	SM PA CITIES	03	99	0.944	0.951
PUERTO RICO	STATEWIDE	STATEWIDE	20	20	0.794	0.794

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
RHODE ISLAND	STATEWIDE	STATEWIDE	01	01	1.068	1.068
SOUTH CAROLINA	STATEWIDE	STATEWIDE	01	01	0.915	0.915
SOUTH DAKOTA	STATEWIDE	STATEWIDE	02	02	0.880	0.880
TENNESSEE	STATEWIDE	STATEWIDE	35	35	0.923	0.923
TEXAS	Anderson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Andrews	WESTERN TX	04	99	0.893	0.924
	Angelina	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Aransas	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Archer	WESTERN TX	04	99	0.893	0.924
	Armstrong	WESTERN TX	04	99	0.893	0.924
	Atascosa	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Austin	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bailey	WESTERN TX	04	99	0.893	0.924
	Bandera	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bastrop	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Baylor	WESTERN TX	04	99	0.893	0.924
	Bee	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bell	TEMPLE, TX	06	99	0.927	0.924
	Bexar	SAN ANTONIO, TX	07	99	0.949	0.924
	Blanco	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Borden	WESTERN TX	04	99	0.893	0.924
	Bosque	NORTHEAST RURAL TX	02	99	0.911	0.924
	Bowie	TEXARKANA, TX	08	99	0.915	0.924
	Brazoria	BRAZORIA, TX	09	09	1.003	1.003
	Brazos	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Brewster	WESTERN TX	04	99	0.893	0.924
	Briscoe	WESTERN TX	04	99	0.893	0.924
	Brooks	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Brown	WESTERN TX	04	99	0.893	0.924
	Burleson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Burnet	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Caldwell	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Calhoun	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Callahan	WESTERN TX	04	99	0.893	0.924
	Cameron	BROWNSVILLE, TX	10	99	0.905	0.924
	Camp	NORTHEAST RURAL TX	02	99	0.911	0.924
	Carson	WESTERN TX	04	99	0.893	0.924
	Cass	NORTHEAST RURAL TX	02	99	0.911	0.924
	Castro	WESTERN TX	04	99	0.893	0.924
	Chambers	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Cherokee	NORTHEAST RURAL TX	02	99	0.911	0.924
	Childress	WESTERN TX	04	99	0.893	0.924
	Clay	WESTERN TX	04	99	0.893	0.924
	Cochran	WESTERN TX	04	99	0.893	0.924
	Coke	WESTERN TX	04	99	0.893	0.924
	Coleman	WESTERN TX	04	99	0.893	0.924
	Collin	NORTHEAST RURAL TX	02	99	0.911	0.924
	Collingsworth	WESTERN TX	04	99	0.893	0.924
	Colorado	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Comal	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Comanche	WESTERN TX	04	99	0.893	0.924
	Concho	WESTERN TX	04	99	0.893	0.924
	Cooke	NORTHEAST RURAL TX	02	99	0.911	0.924
	Coryell	NORTHEAST RURAL TX	02	99	0.911	0.924
	Cottle	WESTERN TX	04	99	0.893	0.924
	Crane	WESTERN TX	04	99	0.893	0.924
	Crockett	WESTERN TX	04	99	0.893	0.924
	Crosby	WESTERN TX	04	99	0.893	0.924
	Culberson	WESTERN TX	04	99	0.893	0.924
	Dallam	WESTERN TX	04	99	0.893	0.924
	Dallas	DALLAS, TX	11	11	1.006	1.006
	Dawson	WESTERN TX	04	99	0.893	0.924
	DeWitt	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Deaf Smith	WESTERN TX	04	99	0.893	0.924
	Delta	NORTHEAST RURAL TX	02	99	0.911	0.924

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Denton	DENTON, TX	12	99	0.955	0.924
	Dickens	WESTERN TX	04	99	0.893	0.924
	Dimmit	WESTERN TX	04	99	0.893	0.924
	Donley	WESTERN TX	04	99	0.893	0.924
	Duval	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Eastland	WESTERN TX	04	99	0.893	0.924
	Ector	ODESSA, TX	13	99	0.946	0.924
	Edwards	WESTERN TX	04	99	0.893	0.924
	El Paso	EL PASO, TX	14	99	0.936	0.924
	Ellis	NORTHEAST RURAL TX	02	99	0.911	0.924
	Erath	WESTERN TX	04	99	0.893	0.924
	Falls	NORTHEAST RURAL TX	02	99	0.911	0.924
	Fannin	NORTHEAST RURAL TX	02	99	0.911	0.924
	Fayette	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Fisher	WESTERN TX	04	99	0.893	0.924
	Floyd	WESTERN TX	04	99	0.893	0.924
	Foard	WESTERN TX	04	99	0.893	0.924
	Fort Bend	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Franklin	NORTHEAST RURAL TX	02	99	0.911	0.924
	Freestone	NORTHEAST RURAL TX	02	99	0.911	0.924
	Frio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gaines	WESTERN TX	04	99	0.893	0.924
	Galveston	GALVESTON, TX	15	15	1.001	1.001
	Garza	WESTERN TX	04	99	0.893	0.924
	Gillespie	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Glasscock	WESTERN TX	04	99	0.893	0.924
	Goliad	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gonzales	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gray	WESTERN TX	04	99	0.893	0.924
	Grayson	GRAYSON, TX	18	99	0.918	0.924
	Gregg	LONGVIEW, TX	17	99	0.921	0.924
	Grimes	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Guadalupe	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Hale	WESTERN TX	04	99	0.893	0.924
	Hall	WESTERN TX	04	99	0.893	0.924
	Hamilton	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hansford	WESTERN TX	04	99	0.893	0.924
	Hardeman	WESTERN TX	04	99	0.893	0.924
	Hardin	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Harris	HOUSTON, TX	18	18	1.034	1.034
	Harrison	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hartley	WESTERN TX	04	99	0.893	0.924
	Haskell	WESTERN TX	04	99	0.893	0.924
	Hays	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Hemphill	WESTERN TX	04	99	0.893	0.924
	Henderson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hidalgo	MC ALLEN, TX	19	99	0.904	0.924
	Hill	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hockley	WESTERN TX	04	99	0.893	0.924
	Hood	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hopkins	NORTHEAST RURAL TX	02	99	0.911	0.924
	Houston	NORTHEAST RURAL TX	02	99	0.911	0.924
	Howard	WESTERN TX	04	99	0.893	0.924
	Hudspeth	WESTERN TX	04	99	0.893	0.924
	Hunt	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hutchinson	WESTERN TX	04	99	0.893	0.924
	Irion	WESTERN TX	04	99	0.893	0.924
	Jack	NORTHEAST RURAL TX	02	99	0.911	0.924
	Jackson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jasper	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jeff Davis	WESTERN TX	04	99	0.893	0.924
	Jefferson	BEAUMONT, TX	20	20	0.973	0.973
	Jim Hogg	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jim Wells	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Johnson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Jones	WESTERN TX	04	99	0.893	0.924
	Karnes	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kaufman	NORTHEAST RURAL TX	02	99	0.911	0.924
	Kendall	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kenedy	SOUTHEAST RURAL TX	03	99	0.922	0.924

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	Kent	WESTERN TX	04	99	0.893	0.924
	Kerr	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kimble	WESTERN TX	04	99	0.893	0.924
	King	WESTERN TX	04	99	0.893	0.924
	Kinney	WESTERN TX	04	99	0.893	0.924
	Kleberg	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Knox	WESTERN TX	04	99	0.893	0.924
	La Salle	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Lamar	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lamb	WESTERN TX	04	99	0.893	0.924
	Lampasas	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lavaca	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Lee	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Leon	NORTHEAST RURAL TX	02	99	0.911	0.924
	Liberty	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Limestone	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lipscomb	WESTERN TX	04	99	0.893	0.924
	Live Oak	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Llano	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Loving	WESTERN TX	04	99	0.893	0.924
	Lubbock	LUBBOCK, TX	21	99	0.924	0.924
	Lynn	WESTERN TX	04	99	0.893	0.924
	Madison	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Marion	NORTHEAST RURAL TX	02	99	0.911	0.924
	Martin	WESTERN TX	04	99	0.893	0.924
	Mason	WESTERN TX	04	99	0.893	0.924
	Matagorda	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Maverick	WESTERN TX	04	99	0.893	0.924
	McCulloch	WESTERN TX	04	99	0.893	0.924
	McLennan	WACO, TX	22	99	0.923	0.924
	McMullen	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Medina	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Menard	WESTERN TX	04	99	0.893	0.924
	Midland	MIDLAND, TX	23	99	0.946	0.924
	Milam	NORTHEAST RURAL TX	02	99	0.911	0.924
	Mills	WESTERN TX	04	99	0.893	0.924
	Mitchell	WESTERN TX	04	99	0.893	0.924
	Montague	NORTHEAST RURAL TX	02	99	0.911	0.924
	Montgomery	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Moore	WESTERN TX	04	99	0.893	0.924
	Morris	NORTHEAST RURAL TX	02	99	0.911	0.924
	Motley	WESTERN TX	04	99	0.893	0.924
	Nacogdoches	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Navarro	NORTHEAST RURAL TX	02	99	0.911	0.924
	Newton	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Nolan	WESTERN TX	04	99	0.893	0.924
	Nueces	CORPUS CHRISTI, TX	24	99	0.941	0.924
	Ochiltree	WESTERN TX	04	99	0.893	0.924
	Oldham	WESTERN TX	04	99	0.893	0.924
	Orange	ORANGE, TX	25	99	0.944	0.924
	Palo Pinto	NORTHEAST RURAL TX	02	99	0.911	0.924
	Panola	NORTHEAST RURAL TX	02	99	0.911	0.924
	Parker	NORTHEAST RURAL TX	02	99	0.911	0.924
	Parmer	WESTERN TX	04	99	0.893	0.924
	Pecos	WESTERN TX	04	99	0.893	0.924
	Polk	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Potter	AMARILLO, TX	26	99	0.930	0.924
	Presidio	WESTERN TX	04	99	0.893	0.924
	Rains	NORTHEAST RURAL TX	02	99	0.911	0.924
	Randall	WESTERN TX	04	99	0.893	0.924
	Reagan	WESTERN TX	04	99	0.893	0.924
	Real	WESTERN TX	04	99	0.893	0.924
	Red River	NORTHEAST RURAL TX	02	99	0.911	0.924
	Reeves	WESTERN TX	04	99	0.893	0.924
	Refugio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Roberts	WESTERN TX	04	99	0.893	0.924
	Robertson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Rockwall	NORTHEAST RURAL TX	02	99	0.911	0.924
	Runnels	WESTERN TX	04	99	0.893	0.924
	Rusk	NORTHEAST RURAL TX	02	99	0.911	0.924

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Sabine	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Augustine	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Jacinto	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Patricio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Saba	WESTERN TX	04	99	0.893	0.924
	Schleicher	WESTERN TX	04	99	0.893	0.924
	Scurry	WESTERN TX	04	99	0.893	0.924
	Shackelford	WESTERN TX	04	99	0.893	0.924
	Shelby	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Sherman	WESTERN TX	04	99	0.893	0.924
	Smith	TYLER, TX	27	99	0.933	0.924
	Somervell	NORTHEAST RURAL TX	02	99	0.911	0.924
	Starr	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Stephens	NORTHEAST RURAL TX	02	99	0.911	0.924
	Sterling	WESTERN TX	04	99	0.893	0.924
	Stonewall	WESTERN TX	04	99	0.893	0.924
	Sutton	WESTERN TX	04	99	0.893	0.924
	Swisher	WESTERN TX	04	99	0.893	0.924
	Tarrant	FORT WORTH, TX	28	28	0.977	0.977
	Taylor	ABILENE, TX	29	99	0.909	0.924
	Terrell	WESTERN TX	04	99	0.893	0.924
	Terry	WESTERN TX	04	99	0.893	0.924
	Throckmorton	NORTHEAST RURAL TX	02	99	0.911	0.924
	Titus	NORTHEAST RURAL TX	02	99	0.911	0.924
	Tom Green	SAN ANGELO, TX	30	99	0.900	0.924
	Travis	AUSTIN, TX	31	31	0.979	0.979
	Trinity	NORTHEAST RURAL TX	02	99	0.911	0.924
	Tyler	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Upshur	NORTHEAST RURAL TX	02	99	0.911	0.924
	Upton	WESTERN TX	04	99	0.893	0.924
	Uvalde	WESTERN TX	04	99	0.893	0.924
	Val Verde	WESTERN TX	04	99	0.893	0.924
	Van Zandt	NORTHEAST RURAL TX	02	99	0.911	0.924
	Victoria	VICTORIA, TX	32	99	0.926	0.924
	Walker	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Waller	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Ward	WESTERN TX	04	99	0.893	0.924
	Washington	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Webb	LAREDO, TX	33	99	0.907	0.924
	Wharton	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Wheeler	WESTERN TX	04	99	0.893	0.924
	Wichita	WICHITA FALLS, TX	34	99	0.906	0.924
	Wilbarger	WESTERN TX	04	99	0.893	0.924
	Willacy	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Williamson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Wilson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Winkler	WESTERN TX	04	99	0.893	0.924
	Wise	NORTHEAST RURAL TX	02	99	0.911	0.924
	Wood	NORTHEAST RURAL TX	02	99	0.911	0.924
	Yoakum	WESTERN TX	04	99	0.893	0.924
	Young	NORTHEAST RURAL TX	02	99	0.911	0.924
	Zapata	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Zavala	WESTERN TX	04	99	0.893	0.924
UTAH	STATEWIDE	STATEWIDE	09	09	0.926	0.926
VERMONT	STATEWIDE	STATEWIDE	50	50	0.955	0.955
VIRGIN ISLANDS	STATEWIDE	STATEWIDE	50	50	0.974	0.974
VIRGINIA	Accomack	REST OF VA	04	99	0.912	0.944
	Albemarle	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Alleghany	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Alleghany	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Alleghany	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Amelia	REST OF VA	04	99	0.912	0.944
	Amherst	REST OF VA	04	99	0.912	0.944
	Appomattox	REST OF VA	04	99	0.912	0.944
	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
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	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bath	REST OF VA	04	99	0.912	0.944
	Bedford	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bedford City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bland	REST OF VA	04	99	0.912	0.944
	Botetourt	REST OF VA	04	99	0.912	0.944
	Bristol City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Brunswick	REST OF VA	04	99	0.912	0.944
	Buchanan	REST OF VA	04	99	0.912	0.944
	Buckingham	REST OF VA	04	99	0.912	0.944
	Campbell	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Caroline	REST OF VA	04	99	0.912	0.944
	Carroll	REST OF VA	04	99	0.912	0.944
	Charles City	REST OF VA	04	99	0.912	0.944
	Charlotte	REST OF VA	04	99	0.912	0.944
	Charlottesville City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Chesapeake City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Chesterfield	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Clarke	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Colonial Heights City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Craig	REST OF VA	04	99	0.912	0.944
	Culpeper	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Cumberland	REST OF VA	04	99	0.912	0.944
	Danville City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Dickenson	REST OF VA	04	99	0.912	0.944
	Dinwiddie	REST OF VA	04	99	0.912	0.944
	Essex	REST OF VA	04	99	0.912	0.944
	Fauquier	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Floyd	REST OF VA	04	99	0.912	0.944
	Fluvanna	REST OF VA	04	99	0.912	0.944
	Franklin	REST OF VA	04	99	0.912	0.944
	Frederick	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Frederick	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Fredericksburg City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Giles	REST OF VA	04	99	0.912	0.944
	Gloucester	REST OF VA	04	99	0.912	0.944
	Goochland	REST OF VA	04	99	0.912	0.944
	Grayson	REST OF VA	04	99	0.912	0.944
	Grayson	REST OF VA	04	99	0.912	0.944
	Greene	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Greeneville	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Greensville	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Halifax	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Halifax	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Hampton City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Hanover	REST OF VA	04	99	0.912	0.944
	Henrico	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Henry	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Henry	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Highland	REST OF VA	04	99	0.912	0.944
	Hopewell City	REST OF VA	04	99	0.912	0.944
	Isle of Wight	REST OF VA	04	99	0.912	0.944
	James City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	King George	REST OF VA	04	99	0.912	0.944
	King William	REST OF VA	04	99	0.912	0.944
	King and Queen	REST OF VA	04	99	0.912	0.944
	Lancaster	REST OF VA	04	99	0.912	0.944
	Lee	REST OF VA	04	99	0.912	0.944
	Loudoun	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Louisa	REST OF VA	04	99	0.912	0.944
	Lunenburg	REST OF VA	04	99	0.912	0.944
	Lynchburg City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Madison	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Manassas Park City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Manassas City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Mathews	REST OF VA	04	99	0.912	0.944
	Mecklenburg	REST OF VA	04	99	0.912	0.944
	Middlesex	REST OF VA	04	99	0.912	0.944
	Montgomery	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Montgomery	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
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	Nelson	REST OF VA	04	99	0.912	0.944
	New Kent	REST OF VA	04	99	0.912	0.944
	Newport News City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Norfolk City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Northampton	REST OF VA	04	99	0.912	0.944
	Northumberland	REST OF VA	04	99	0.912	0.944
	Nottoway	REST OF VA	04	99	0.912	0.944
	Orange	REST OF VA	04	99	0.912	0.944
	Page	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Patrick	REST OF VA	04	99	0.912	0.944
	Petersburg City	REST OF VA	04	99	0.912	0.944
	Pittsylvania	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Poquoson City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Portsmouth City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Powhatan	REST OF VA	04	99	0.912	0.944
	Prince Edward	REST OF VA	04	99	0.912	0.944
	Prince George	REST OF VA	04	99	0.912	0.944
	Prince William	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Pulaski	REST OF VA	04	99	0.912	0.944
	Rappahannock	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Richmond	REST OF VA	04	99	0.912	0.944
	Richmond City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Roanoke	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Roanoke City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockingham	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockingham	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Russell	REST OF VA	04	99	0.912	0.944
	Salem City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Scott	REST OF VA	04	99	0.912	0.944
	Shenandoah	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Smyth	REST OF VA	04	99	0.912	0.944
	Southampton	REST OF VA	04	99	0.912	0.944
	Southampton	REST OF VA	04	99	0.912	0.944
	Spotsylvania	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Stafford	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Suffolk City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Surry	REST OF VA	04	99	0.912	0.944
	Sussex	REST OF VA	04	99	0.912	0.944
	Tazewell	REST OF VA	04	99	0.912	0.944
	Virginia Beach City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Warren	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Washington	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Westmoreland	REST OF VA	04	99	0.912	0.944
	Williamsburg City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Wise	REST OF VA	04	99	0.912	0.944
	Wise	REST OF VA	04	99	0.912	0.944
	Wythe	REST OF VA	04	99	0.912	0.944
	York	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
WASHINGTON	Adams	E CNTRL & NE WA	03	99	0.956	0.962
	Asotin	E CNTRL & NE WA	03	99	0.956	0.962
	Benton	E CNTRL & NE WA	03	99	0.956	0.962
	Chelan	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Clallam	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Clark	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Columbia	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Cowlitz	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Douglas	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Ferry	E CNTRL & NE WA	03	99	0.956	0.962
	Franklin	E CNTRL & NE WA	03	99	0.956	0.962
	Garfield	E CNTRL & NE WA	03	99	0.956	0.962
	Grant	E CNTRL & NE WA	03	99	0.956	0.962
	Grays Harbor	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Island	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Jefferson	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	King	SEATTLE (KING CNTY), WA	02	02	1.023	1.023
	Kitsap	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962

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			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Kittitas	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Klickitat	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Lewis	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Lincoln	E CNTRL & NE WA	03	99	0.956	0.962
	Mason	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Okanogan	E CNTRL & NE WA	03	99	0.956	0.962
	Pacific	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Pend Oreille	E CNTRL & NE WA	03	99	0.956	0.962
	Pierce	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	San Juan	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Skagit	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Skamania	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Snohomish	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Spokane	E CNTRL & NE WA	03	99	0.956	0.962
	Stevens	E CNTRL & NE WA	03	99	0.956	0.962
	Thurston	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Wahkiakum	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Walla Walla	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Whatcom	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Whitman	E CNTRL & NE WA	03	99	0.956	0.962
	Yakima	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
WEST VIRGINIA	Barbour	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Berkeley	EASTERN VALLEY, WV	18	99	0.937	0.919
	Boone	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Braxton	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Brooke	WHEELING, WV	17	99	0.911	0.919
	Cabell	CHARLESTON, WV	16	99	0.941	0.919
	Calhoun	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Clay	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Doddridge	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Fayette	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Gilmer	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Grant	EASTERN VALLEY, WV	18	99	0.937	0.919
	Greenbrier	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Hampshire	EASTERN VALLEY, WV	18	99	0.937	0.919
	Hancock	WHEELING, WV	17	99	0.911	0.919
	Hardy	EASTERN VALLEY, WV	18	99	0.937	0.919
	Harrison	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Jackson	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Jefferson	EASTERN VALLEY, WV	18	99	0.937	0.919
	Kanawha	CHARLESTON, WV	16	99	0.941	0.919
	Lewis	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Lincoln	CHARLESTON, WV	16	99	0.941	0.919
	Logan	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Marion	WHEELING, WV	17	99	0.911	0.919
	Marshall	WHEELING, WV	17	99	0.911	0.919
	Mason	CHARLESTON, WV	16	99	0.941	0.919
	McDowell	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Mercer	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Mineral	EASTERN VALLEY, WV	18	99	0.937	0.919
	Mingo	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Monongalia	WHEELING, WV	17	99	0.911	0.919
	Monroe	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Morgan	EASTERN VALLEY, WV	18	99	0.937	0.919
	Nicholas	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Ohio	WHEELING, WV	17	99	0.911	0.919
	Pendleton	EASTERN VALLEY, WV	18	99	0.937	0.919
	Pleasants	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Pocahontas	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Preston	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Putnam	CHARLESTON, WV	16	99	0.941	0.919
	Raleigh	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Randolph	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Ritchie	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Roane	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Summers	SOUTHERN VALLEY, WV	20	99	0.898	0.919
	Taylor	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Tucker	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Tyler	OHIO RIVER VALLEY, WV	19	99	0.910	0.919

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"Indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Upshur	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wayne	CHARLESTON, WV	16	99	0.941	0.919
	Webster	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wetzel	WHEELING, WV	17	99	0.911	0.919
	Wirt	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wood	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wyoming	SOUTHERN VALLEY, WV	20	99	0.898	0.919
WISCONSIN	Adams	CENTRAL WI	13	99	0.924	0.968
	Ashland	NORTHWEST WI	12	99	0.925	0.968
	Barron	NORTHWEST WI	12	99	0.925	0.968
	Bayfield	NORTHWEST WI	12	99	0.925	0.968
	Brown	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Buffalo	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Burnett	NORTHWEST WI	12	99	0.925	0.968
	Calumet	OSHKOSH (E CNTRL), WI	60	99	0.946	0.968
	Chippewa	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Clark	NORTHWEST WI	12	99	0.925	0.968
	Columbia	CENTRAL WI	13	99	0.924	0.968
	Crawford	SOUTHWEST WI	14	99	0.924	0.968
	Dane	MADISON (DANE CNTY), WI	15	99	1.002	0.968
	Dodge	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Door	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Douglas	NORTHWEST WI	12	99	0.925	0.968
	Dunn	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Eau Claire	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Florence	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Fond du Lac	OSHKOSH (E CNTRL), WI	60	99	0.946	0.968
	Forest	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Grant	SOUTHWEST WI	14	99	0.924	0.968
	Green	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Green Lake	CENTRAL WI	13	99	0.924	0.968
	Iowa	SOUTHWEST WI	14	99	0.924	0.968
	Iron	NORTHWEST WI	12	99	0.925	0.968
	Jackson	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Jefferson	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Juneau	CENTRAL WI	13	99	0.924	0.968
	Kenosha	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Kewaunee	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	La Crosse	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Lafayette	SOUTHWEST WI	14	99	0.924	0.968
	Langlade	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Lincoln	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Manitowoc	OSHKOSH (E CNTRL), WI	60	99	0.946	0.968
	Marathon	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Marinette	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Marquette	CENTRAL WI	13	99	0.924	0.968
	Menominee	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Milwaukee	MILWAUKEE, WI	04	99	0.999	0.968
	Monroe	CENTRAL WI	13	99	0.924	0.968
	Oconto	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Oneida	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Outagamie	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Ozaukee	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Pepin	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Pierce	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Polk	NORTHWEST WI	12	99	0.925	0.968
	Portage	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Price	NORTHWEST WI	12	99	0.925	0.968
	Racine	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Richland	SOUTHWEST WI	14	99	0.924	0.968
	Rock	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Rusk	NORTHWEST WI	12	99	0.925	0.968
	Sauk	SOUTHWEST WI	14	99	0.924	0.968
	Sawyer	NORTHWEST WI	12	99	0.925	0.968
	Shawano	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Sheboygan	OSHKOSH (E CNTRL), WI	60	99	0.946	0.968
	St. Croix	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968
	Taylor	NORTHWEST WI	12	99	0.925	0.968
	Trempealeau	LA CROSSE (W CNTRL), WI	19	99	0.943	0.968

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Vernon	SOUTHWEST WI	14	99	0.924	0.968
	Vilas	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Walworth	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Washburn	NORTHWEST WI	12	99	0.925	0.968
	Washington	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Waukesha	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Waupaca	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Waushara	CENTRAL WI	13	99	0.924	0.968
	Winnebago	OSHKOSH (E CNTRL), WI	60	99	0.946	0.968
	Wood	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
WYOMING	STATEWIDE	STATEWIDE	21	21	0.925	0.925

† Michigan FSAs are the same under Policy Options Basic and Extended as under the 1/1/95 localities. The GAFs differ slightly because of rounding error.

SOURCE: Health Economics Research file of county input prices.

[FR Doc. 96–16744 Filed 6–27–96; 9:43 am]
BILLING CODE 4120–01–C

federal register

Tuesday
July 2, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Mark-to-Market/Portfolio Reengineering Demonstration: Notice of Demonstration and Initial Program Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4099–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Mark-to-Market/Portfolio Reengineering Demonstration: Notice of Demonstration and Initial Program Guidelines

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of demonstration program and initial guidance.

SUMMARY: This notice announces a demonstration program that is designed to restructure the financing of projects that have FHA-insured mortgages and that receive Section 8 rental assistance. The purpose of this Congressionally authorized demonstration is to test the feasibility and desirability of multifamily projects meeting their financial and other obligations with or without FHA insurance and with or without above market Section 8 assistance and utilizing project-based assistance or, with the consent of the project owner, tenant-based assistance. In negotiating agreements with eligible project owners, HUD must act to, among other things, take into account the need for assistance of low- and very low-income tenants; address structural problems of projects; and protect the financial interests of the Federal Government. This notice also provides initial guidance on how the Department plans to operate the demonstration program. HUD anticipates that, over time, it will publish additional guidance that reflects in more detail how the program will operate as well as the experience derived through the execution of successful agreements with project owners.

DATES: This demonstration program guidance is effective July 2, 1996. In a separate notice, HUD will publish information requirements that demonstration participants will need to comply with.

FOR FURTHER INFORMATION CONTACT: George Dipman, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410–4000; Room 6174; telephone (202) 708–3321. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY).

SUPPLEMENTARY INFORMATION:

I. Background:

This demonstration, titled FHA Multifamily Demonstration Authority, is authorized by section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. No. 104–134, 110 Stat. 1321, April 26, 1996). It reflects concern of both the Congress and the Administration about social issues and budgetary costs associated with the renewal of Section 8 project-based assistance contracts on multifamily properties having FHA-insured mortgages. As of August 1995, the HUD portfolio contained 8,563 projects, with a total of over 850,000 units, that have HUD insured loans supported by Section 8 rental assistance contracts. Under existing contracts, most of which are due to expire over the next few years, many projects receive project-based Section 8 rental assistance for rents that exceed those charged on comparable, unassisted units within the local market. At the same time, these projects often have substantial unmet capital needs. The Federal assistance, in the aggregate, is costly. If assistance contracts were to be renewed on a long term basis, based on current contract rent levels, the annual cost to the Federal Government would increase dramatically by the year 2000. Consequently, Congress has opted not to renew Section 8 contracts on these projects for more than one year, while the Department seeks alternative solutions to the housing and budget issues.

For many project owners, if their level of Section 8 assistance is reduced or eliminated, and all else remains constant, the likelihood is that they will be unable to continue to meet project financial obligations, including mortgage debt service payments, current and future capital needs, and operating expenses such as project reserve and repair costs. This could lead to mortgage defaults, deterioration of this important housing stock, and the possible displacement of thousands of low-income families and seniors nationwide.

Over the past year, Congress, owners, lenders, tenants, and other interested parties have proposed various alternative solutions to this long term and serious problem. Congress has authorized this demonstration, enabling HUD to test various methods of restructuring the financing of these projects. One goal of the demonstration program is to test alternative creative solutions that will provide long-term viability of the properties as affordable housing, which will benefit local communities and their tenants.

The remaining sections of this notice provide the following information:

Section II. Summarizes provisions of Section 210, including project owner eligibility requirements, and tools that HUD can employ to carry out the demonstration.

Section III. Describes HUD's primary objectives in implementing the demonstration, and how HUD anticipates working with owners in reaching agreements.

Section IV. Employs a Question and Answer format to address a variety of specific issues, and is intended to further clarify HUD's approach to implementing the demonstration program.

Section V. Describes certain certifications that HUD makes in connection with publication of this notice of demonstration program.

II. Section 210—Goals, Mandates and Tools

A. Eligible Program Participants

Eligible projects, defined in the legislation, include those multifamily properties

1. Whose owners agree to participate; and

2. Whose mortgages are FHA insured and which receive project-based assistance under Section 8 of the United States Housing Act of 1937; and

3. Whose present Section 8 rents are, in the aggregate, in excess of the Fair Market Rent (FMR) for the area in which the project is located.

B. Goals

Consistent with the legislative objectives, HUD's goal will be to carry out this demonstration program in a manner that will:

1. Result in significant discretionary cost savings through the reduction of above-market Section 8 assistance through early terminations and restructuring of long-term project-based assistance contracts.

2. In the least costly fashion—

a. Maintain existing housing stock in a decent, safe, and sanitary condition;

b. Minimize the involuntary displacement of tenants;

c. Restructure mortgages in a manner that is consistent with local housing market conditions;

d. Support fair housing strategies;

e. Minimize any adverse income tax impact on property owners; and

f. Minimize any adverse impact on residential neighborhoods; and

3. Protect the financial interests of the Federal Government.

Congress provided, in addition, that in determining the manner in which a mortgage is to be restructured or the subsidy reduced, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this demonstration.

C. Mandates

Section 210 provides that, under the demonstration, HUD can pursue these goals with respect to project mortgages securing up to 15,000 units. Moreover, Congress has appropriated $30,000,000 for the cost of modifying mortgage loans, as such costs are defined in section 502 of the Congressional Budget Act of 1974, as amended. Also, the legislation authorizes HUD to directly enter into joint venture arrangements with third parties, under which the Secretary may assign some or all of the functions, obligations and benefits of the Secretary, and to purchase reinsurance, enter into participations, or otherwise transfer the economic interest in contracts of insurance or mortgage insurance premiums on such contracts of insurance. (This notice, however, does not address the implementation of the third party joint venture component of the demonstration. Guidelines for joint venture partners shall be released at a later date.)

D. Tools

The demonstration program will use a variety of tools and authorities to restructure the financing of assisted FHA-insured projects. The basic approach will work through the voluntary participation of the project owners and lenders to move rents and operating costs toward market levels immediately or over time, and to reduce the outstanding principal balance to reflect any decline in net operating income that may result. The restructuring process attempts to put the projects on a sound financial and physical footing with market rents, sufficient to service the remaining debt and operating costs, including replacement reserves.

Reasonable rehabilitation costs may be supported first through the release of reserves and residual receipts accounts, and then by further reduction of the principal balance. Extraordinary rehabilitation needs may require capital infusions from partners and state and local government assistance.

Existing tenants will continue to be assisted with tenant based Section 8 assistance or by project based Section 8 assistance. Section 8 assistance for projects with contracts expiring in 1997 shall be renewed only after annual budget authorizations by Congress. To support mixed-income developments, some tenants who receive tenant-based assistance and vacate the project may be replaced with families that are not eligible for Section 8 assistance.

Post workout refinancing methods may include leaving the existing FHA-insured loan in place, refinancing the mortgage with an FHA-insured mortgage under an FHA refinancing program, obtaining a new loan and FHA insurance, and financing through conventional sources.

Existing tax law will apply to reengineered, assisted FHA projects. Mitigating any tax consequences resulting from debt cancellation will be the responsibility of the owner. HUD will consider any approach that is revenue neutral to the property owners and investors.

Depending on the particular characteristics of a project, HUD and an owner and, where applicable, with the consent of affected third parties, could enter into a restructuring agreement that includes, but is not limited to, one or more of the following actions:

1. Restructuring rents at or above market where, in the latter instance, market rents are insufficient to cover operating costs irrespective of debt service;

2. Forgiving and cancelling any FHA-insured mortgage debt that a demonstration project cannot carry at market rents while bearing reasonable operating costs;

3. Paying all or a portion of a project's debt service, including monthly payments from the appropriate Insurance Fund for the full remaining term of the insured mortgage;

4. Replacing FHA mortgage insurance with uninsured debt or continuing FHA mortgage insurance, if warranted;

5. Not renewing expiring existing project-based assistance contracts with the provision of tenant-based assistance to previously assisted households;

6. Providing project-based assistance with rents at or below fair market rents for the locality and negotiating other terms acceptable to HUD and the owner;

7. Deciding to remove, relinquish, extinguish, modify, or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or any restriction that had been imposed by the Secretary, including the restriction on distribution of income; and

8. Requiring the owner of an assisted property to apply any accumulated residual receipts toward effecting the purposes of the reengineering initiative.

III. HUD's Portfolio Reengineering Program—Overview

HUD's Portfolio Reengineering program, which will implement the Demonstration, is designed to soften the impact of Section 8 budget reductions. Under its Portfolio Reengineering program, HUD seeks to reduce Federal assistance payments while stabilizing projects physically and financially and reducing reliance on Federal insurance, and to do so with the least possible disruption to tenants and neighborhoods.

These objectives will be accomplished by, among other things, (1) reducing rents and operating costs to market levels; (2) making corresponding reductions in the principal balances of outstanding mortgages; and (3) improving the ability of the current assisted residents to pay market rent levels. Reengineering may also provide tenants with tenant-based rental assistance or continued project-based rental subsidies at lower rent levels.

HUD will implement the demonstration through a combination of HUD field and headquarters staff, private consultants and third parties or joint venture partners. As previously noted, these guidelines do not address guidelines for the involvement of joint venture partners. Guidelines for joint venture partners will be released at a later date.

Project readiness will be a significant criterion for allocating demonstration resources. HUD seeks reengineering projects with very real prospects for support from the existing mortgagee, owners, new lenders, and the community, including tenants.

Under the demonstration, HUD intends to ensure that affected tenants and representatives of the local community and government have a meaningful opportunity to review and react to a proposed agreement before any agreement is finalized.

Reviews of proposals made under the demonstration will be conducted on an "open window" batched basis with monthly reviews by a loan workout committee that will consider various workout approaches as described in section II. D. Proposals that contain a number of the following characteristics will be given priority if demand for the demonstration exceeds authority and resources. HUD may add additional priority criteria, in future notices that provide additional guidance under the demonstration. HUD prefers projects and proposals that meet the following criteria:

1. Have Section 8 contracts that extend beyond 1997, and which reduce

rental assistance over the remaining life of the contract, or use rental assistance to prepare the project for market rents;

2. Reduce rents to market rents, rather than to an above-market level;

3. Minimize the impact of credit subsidy requirements resulting from the modification of the existing mortgage debt or the provision of new FHA insurance;

4. Maximize reduction of Federal expenditures through—

a. Low principal reduction (i.e. minimum partial payment of claim);

b. Section 8 savings; or

c. Reduced operating costs;

5. Eliminate project-based rental assistance in favor of tenant-based rental assistance;

6. Eliminate or reduce the existing FHA mortgage insurance;

7. Achieve restructuring through the use of non-HUD personnel;

8. Preserve some long-term affordability;

9. Serve housing needs of low- and very low-income tenants; and

10. Illustrate efforts to raise the economic value of property by increasing the earning power of the existing tenant population through initiatives such as education, job training and entrepreneurship.

IV. Ongoing Clarification of Demonstration Guidelines

The primary goal of the Portfolio Reengineering Demonstration is to provide HUD, Congress, and assisted FHA project owners and tenants a testing ground for wide-scale restructuring and stabilizing of this endangered housing resource. As the demonstration evolves, questions that arise through field testing approaches to reengineering will be answered through periodic published question and answer bulletins. The following "Qs and As" address some issues already communicated to HUD.

Q. One goal of the demonstration is to test alternative creative solutions that will provide long term viability to the properties and their tenants. What kind of alternative creative solutions would be considered?

A. HUD will give highest priority in restructuring to owners who can demonstrate a decreasing need for Section 8 assistance because of the implementation of programs which enhance the ability of assisted residents to pay an increasingly greater portion of the market rent. The additional effects of increased tenant earning capacity will be to reduce other governmental expenditures and increase tax receipts and also to stabilize and enhance property values. Illustrations of alternative solutions, in addition to reliance on the financing and rehabilitation tools specified above, include investment of owner and/or project resources targeted at resident job training and placement, education, self-sufficiency, enterprise development, entrepreneurship and social services; and commitments from community related organizations to assist in similar endeavors. Owners whose proposals include such initiatives should outline specifically the goals they plan to achieve and how the implementation of such programs will result in enhanced financial capacity for the real estate and the tenants.

Q. What is the definition of market rents?

A. Market rents refers to the rent achievable by the project without rent subsidy when competing in the market place for new tenants. Two or more market rent projections for a given project may be considered in reengineering negotiations. For example, there may be a market rent for a project in "as-is" condition, another rent for a rehabilitated project, another rent for a project to which amenities have been added, and still another rent that is achievable two or three years after restructuring is completed and income mixing has occurred.

Q. How will operating expenses be determined for the purposes of calculating the mortgage supportable after rents are moved to market?

A. HUD's due diligence contractor will evaluate project operating statements, will reduce costs that are a product of HUD requirements and processes that can be eliminated, and HUD will negotiate the balance of any operating expenses that appear to exceed market levels with the owner in light of industry standards for market rate developments.

Q. Will HUD keep existing FHA insurance in place after restructuring?

A. It is HUD's preference to extinguish existing insurance immediately or over time and transition reengineered projects to freshly underwritten permanent financing. This preference is driven by both HUD budget considerations, and well established banking principles regarding the restructuring of troubled assets. However, HUD will consider extenuating circumstances that may justify leaving existing insurance in place.

Q. Will projects with HUD held mortgages be considered for the demonstration?

A. No. The demonstration is limited to insured mortgages.

Q. What rehabilitation levels and capital improvements will be supported by the demonstration?

A. Restructuring must be designed to ensure the long term physical integrity of the project. HUD will consider rehabilitation necessary to achieve that objective. In addition, HUD will consider the addition of amenities when the owner can demonstrate they will support higher market rents that will reduce net long term costs to the Federal Government. This could include, for example, improvements that promote the economic self-sufficiency of the tenants. Any project rehabilitation or capital improvements supported by HUD will comply with 24 CFR part 50.

Q. What owner administrative costs will HUD allow to be offset in the workout process?

A. Non-profit owners may include reasonable transaction costs and administrative fees as eligible uses of funds in loan workouts.

Q. How will the demonstration approach projects in which market rents are insufficient to support operating costs?

A. These projects are not included in the initial focus of the demonstration, but will be addressed in future guidelines.

Q. Will the demonstration include projects in which restructuring occurs in conjunction with a sale or transfer to a new owner?

A. Yes.

V. Other matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The notice implements a statutorily

authorized demonstration program and is intended to find ways of reducing the impact on families that might otherwise not be caused by the nonrenewal of Section 8 project-based rental assistance.

Dated: June 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96-16790 Filed 6-27-96; 4:03 pm]

BILLING CODE 4210-27-P

federal register

Tuesday
July 2, 1996

Part VI

Department of Education

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention); Final Priority and Inviting Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention)

AGENCY: Department of Education.

ACTION: Notice of Final Priority for Fiscal Year 1996.

SUMMARY: The Secretary announces a final priority for fiscal year (FY) 1996 under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on unmet national needs. Under this priority, the Department will fund the development and implementation of innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes. Strategies may include, but need not be limited to: (1) Developing and disseminating curricula or other instructional materials on the causes and consequences of hate-motivated behavior and effective measures of intervening with youth to prevent such behaviors; (2) school-community partnerships that provide opportunities for youth to engage in service learning activities designed to reduce the incidence of crimes and conflicts motivated by hate; and (3) training of school personnel, parents, and community members on issues related to crimes and conflicts motivated by hate.

EFFECTIVE DATE: This priority takes effect August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charlotte Gillespie, U.S. Department of Education, 600 Independence Ave., SW., Room 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and will offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the Nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The SDFSCA Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) Demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the Nation to improve their programs under the SDFSCA.

This notice contains one absolute priority to be applied to this competition under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program.

The Secretary will award approximately 10 grants in fiscal year 1996 to public and private nonprofit organizations and individuals, including local educational agencies, for applications that address the absolute priority in a particularly innovative and effective manner. Grants will be for a period of one year; however, because of the urgent national need for effective programs to address violent behavior motivated by hate, applications must clearly demonstrate an ability to begin service delivery to the target audience within four months of the grant award.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1997 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register.**

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Developing and implementing innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Applicants proposing a project under this priority must—

(1) Describe the problem that will be addressed, including an assessment of the number of persons who will benefit from the project;

(2) Demonstrate that the community to be served by the project has a significant level of crime or conflict motivated by hate;

(3) Describe the activities to be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in the school and community environment, and how they will be cost-effective and replicable;

(4) Provide evidence of collaboration with the following groups in the planning and implementation of the program—

(i) Students and families,

(ii) Local school officials and teachers,

(iii) Community leaders and representatives from groups such as religious, business, and civic organizations, and

(iv) Juvenile justice, law enforcement, and community policing representatives;

(5) Identify the roles and responsibilities of each participating group;

(6) Describe the behavioral, developmental, or theoretical basis for the proposed project and provide evidence for its effectiveness in preventing and reducing the incidence of crimes and conflicts motivated by hate;

(7) Identify the intended audience to be served and describe how the proposed activities are appropriate for the target population;

(8) Provide a detailed plan of implementation, including evidence of ability to begin service delivery within four months of the grant award;

(9) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured; and

(10) Provide evidence of the proposed strategy's potential to provide a replicable model of effective practice for other schools and communities facing similar problems.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would

have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedures Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1996 funds, public comment on those rules is impracticable. Congress did not appropriate FY 1996 funds for this program until April 26, 1996. The Secretary must make new awards no later than September 30, 1996. Moreover, the Safe and Drug-Free Schools and Communities National Programs statute is designed to address emergency needs in drug and violence prevention. Programs need to be implemented as early as possible in the 1996–97 school year. Due to the delay in the appropriation of FY 1996 funds, it is now impracticable to receive public comments and still allow FY 1996 awards to be made by September 30, 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen 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, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

(Catalog of Federal Domestic Assistance Program Number 84.184E Safe and Drug-Free Schools and Communities Act Federal Activities Grants Program)

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 96–16835 Filed 6–28–96; 9:01 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.184E]

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention)

Notice inviting applications for new awards for fiscal year (FY) 1996.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To fund the development and implementation of innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Eligible Applicants: Public and private nonprofit organizations and individuals, including local educational agencies.

Deadline for Receipt of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 2, 1996.

Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimate Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Note: As of July 1, 1995, Part 86 of EDGAR no longer applies to SEAs and LEAs. It continues to apply to IHEs. This change results from the Improving America's Schools Act of 1994, Pub.L. 103–382.

Description of Program: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The Safe and Drug-Free Schools Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

Public and private nonprofit organizations and individuals receiving funds under this program may not use funds for construction (except for minor remodeling needed to carry out the activities described in the application) and medical services, drug treatment or rehabilitation, except for pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs.

The term 'nonprofit', as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Background

Consistent with the definition used by the Department of Justice, a hate crime

is a criminal offense committed against a person or property that is motivated, in whole or in part, by the offender's bias against a race, religion, ethnic/national origin, or sexual orientation group.

National attention has focused on the recent wave of church burnings and the need to intervene forcefully to prevent these criminal acts and to promote tolerance among races, cultures, and religions. A recent report in *The Washington Post* (Wednesday, June 19, 1996, page A1) notes: "The people burning down black churches in the South are generally white, male and young, usually economically marginalized or poorly educated, frequently drunk or high on drugs, rarely affiliated with hate groups, but often deeply driven by racism. * * *" In the last 18 months, according to the Bureau of Alcohol, Tobacco and Firearms, there have been 37 suspicious fires at predominantly African American churches and 23 suspicious fires at predominantly white churches.

Data collected from six States as part of the Department of Justice study on juvenile hate crime suggest that an estimated 17 percent to 26 percent of all hate crimes recorded by law enforcement can be attributed to persons under the age of 18. The study also identified a correlation between involvement in hate crime offenses and gang-related crime.

Priority: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** and repeated below, applies to this competition.

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet the absolute priority.

Absolute Priority—Developing and implementing innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Applicants proposing a project under this priority must—

(1) Describe the problem that will be addressed, including an assessment of the number of persons who will benefit from the project;

(2) Demonstrate that the community to be served by the project has a significant level of crime or conflict motivated by hate;

(3) Describe the activities to be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in the school and community environment, and how they will be cost-effective and replicable;

(4) Provide evidence of collaboration with the following groups in the planning and implementation of the program—

(i) Students and families,

(ii) Local school officials and teachers,

(iii) Community leaders and representatives from groups such as religious, business, and civic organizations, and

(iv) Juvenile justice, law enforcement, and community policing representatives;

(5) Identify the roles and responsibilities of each participating group;

(6) Describe the behavioral, developmental, or theoretical basis for the proposed project and provide evidence for its effectiveness in preventing and reducing the incidence of crimes and conflicts motivated by hate;

(7) Identify the intended audience to be served and describe how the proposed activities are appropriate for the target population;

(8) Provide a detailed plan of implementation, including evidence of ability to begin service delivery within four months of the grant award;

(9) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured; and

(10) Provide evidence of the proposed strategy's potential to provide a replicable model of effective practice for other schools and communities facing similar problems.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 Points) the Secretary reviews each application to determine how well the project will meet the purpose of the Safe and Drug-Free Schools and Communities Act of 1994 including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Safe and Drug-Free Schools and Communities Act of 1994.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Safe and Drug-Free Schools and Communities Act of 1994, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be received by the date indicated in this notice at the following address: The Secretary, E.O.12372—CFDA # 84.184E, U.S. Department of Education, Room 6213, 600 Independence Ave., SW, Washington, D.C. 20202–0125.

Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal and receipt of applications.

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.184E), Washington, D.C. 20202–4725.

Note: All applications must be received by August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.184E), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

Notes:

(1) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(2) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

PART III: Application Narrative.

ADDITIONAL MATERIALS:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Charlotte D. Gillespie, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington, D.C. 20202–6123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases); or on the World Wide Web at (http://www/ed/gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: 20 U.S.C. 7131

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify): _____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 8 4E

TITLE: Federal Activities Grants Program (Hate Crimes Prevention)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

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Part III—Application Narrative

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being required and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1810–0551, Exp. Date: 9/11/96. The time required to complete this information collection is estimated to average 28 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Charlotte D. Gillespie, Safe and Drug-Free Schools Program, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–6123.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

BILLING CODE 4000-01-C

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–16836 Filed 6–28–96; 9:01 am]

BILLING CODE 4000–01–M

federal register

Tuesday
July 2, 1996

Part VII

Department of Education

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention); Final Priorities and New Awards Applications for FY 1996; Notices

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention)

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1996.

SUMMARY: The Secretary announces priorities for fiscal year (FY) 1996 under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on national needs. Under these priorities, the Department will fund projects that develop and implement, expand, or enhance innovative programs designed to accomplish one or more of the following: (1) Infusing research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth; (2) removing firearms and other weapons from schools; (3) preventing truancy and addressing the needs of youth who are out of the education mainstream; or (4) preventing violent, aggressive, intimidating, or other disruptive behavior arising out of bullying, sexual harassment, or other cause.

EFFECTIVE DATE: These priorities take effect August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charlotte Gillespie, U.S. Department of Education, 600 Independence Avenue, SW., Room 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and will offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the Nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The SDFSCA Federal Activities Grants Program supports the development of innovative programs that (1) Demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

This notice contains four absolute priorities and one competitive preference priority to be applied to this competition under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program.

Under priority 1, the Department will fund innovative projects that infuse research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth.

Under priority 2, the Department will fund innovative strategies to remove firearms and other weapons from schools. For this competition, a weapon means a knife, club, or other device used to inflict intentional injury.

Under priority 3, the Department will fund innovative, research-based programs to prevent truancy and address the needs of youth who are out of the education mainstream. For this competition, youth who are out of the education mainstream means truants, dropouts, children who are afraid to go to school, children who have been suspended or expelled, and children in the juvenile justice system who need to maintain or enhance their educational status and be reintegrated into the school system upon their release from residential placement.

Under priority 4, the Department will fund innovative, research-based strategies to prevent violent, aggressive, intimidating, or other disruptive behavior arising from bullying, sexual harassment, or other cause.

Under the competitive priority, the Secretary will award five (5) extra points to applications from Empowerment Zones and Enterprise Communities (EZ/EC). The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is the first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

The Departments of Agriculture (USDA) and Housing and Urban Development (HUD) have designated empowerment zones and enterprise communities, which are communities located within the cities and counties listed in the appendix.

The Empowerment Zones and Enterprise Communities were designated based on locally-developed strategic plans that comprehensively address how the community will link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together will support sustainable communities. Designated areas receive Federal grant funds and substantial tax benefits and have access to other Federal programs. (For additional information on the Urban EZ/EC program, contact HUD at 1–800–998–9999 and for the rural EZ/EC program, contact USDA at 1–800–645–4712.)

The Secretary will award approximately 25 grants in FY 1996, for a period not to exceed two years, to public and private nonprofit organizations and individuals to develop and implement, expand, or enhance innovative, research-based programs that address these priorities.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1997 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Absolute Priority 1—Infusing Research-Based Knowledge About "What Works" Into the Design, Development and Implementation of School-Based Strategies to Prevent Drug Use Among Youth.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Identify the age groups to be served and describe how the proposed activities are appropriate for the target population;

(3) Provide evidence of collaboration between a local educational agency (LEA) and a research institution in the design and implementation of activities, including a description of the roles and responsibilities of each; and

(4) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 2—Removing Firearms and other Weapons from School

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe techniques the applicant will use to identify and remove firearms and other weapons that are brought into school;

(3) Provide information that demonstrates the extent to which the applicant has involved local, State, and/or Federal law enforcement agencies, as appropriate, in the development and implementation of innovative strategies to prevent firearms and other weapons from coming into school;

(4) Describe how the applicant will provide for referrals to the juvenile justice system of youths who are found to possess a firearm, consistent with the provisions of the Gun-Free Schools Act; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 3—Preventing Truancy and Addressing the Needs of Youth Who are Out of the Education Mainstream

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the problem that will be addressed including an assessment of the number of students who will benefit from the project;

(3) Indicate how the activities are appropriate for returning truant and other youth who are out of the education mainstream to the classroom and ensuring their educational progress;

(4) Provide information on the extent to which the following will be involved in the development and implementation of activities funded by this grant: parents, students, local law enforcement officials, including, as appropriate, juvenile justice authorities, and other youth-serving organizations in the community; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 4: Preventing Violent, Aggressive, Intimidating or Other Disruptive Behavior Arising From Bullying, Sexual Harassment or Other Cause

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the behaviors that the program seeks to correct, including an assessment of the types and frequency of violent, aggressive, intimidating, or other disruptive behavior among youth to be served;

(3) Identify the child development framework used to identify appropriate strategies for intervening in violent, aggressive, intimidating, or other disruptive behavior;

(4) Provide information on the extent to which educators, law enforcement officials, parents, and students have been involved in the development and implementation of interventions for youths who engage in violent, aggressive, intimidating, or other disruptive behaviors and for youths who are victims of such behaviors; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and the Safe and Drug-Free Schools and Communities Act, gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority. These points would be in addition to any points the application earns under the evaluation criteria for the program.

Note: The total number of points an application may earn is 105:

Projects in an Empowerment Zone or Enterprise Community

In order to meet the competitive preference priority, applicants must—

(1) Propose projects that meet one or more of the four absolute priorities for this competition;

(2) Demonstrate that the project will be carried out in an Empowerment Zone (EZ) or Enterprise Community (EC) designated in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993 or that it will primarily serve students who reside in an EZ or EC; and

(3) Describe how the proposed project is linked to the EZ/EC strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community Program.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedures Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1996 funds, public comment on those rules is impracticable. Congress did not

appropriate FY 1996 funds for this program until April 26, 1996. The Secretary must make new awards no later than September 30, 1996. Moreover, the Safe and Drug-Free Schools and Communities National Programs statute is designed to address emergency needs in drug and violence prevention. Programs need to be implemented as early as possible in the 1996–97 school year. Due to the delay in the appropriation of FY 1996 funds, it is now impracticable to receive public comments and still allow FY 1996 awards to be made by September 30, 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen 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, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Program Number 84.184D Safe and Drug-Free Schools and Communities Act Federal Activities Grants Program)

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (EZ)

Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Michigan: Detroit
Mississippi: Mid Delta*
New York: Harlem, Bronx
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Rio Grande Valley*

Supplemental Empowerment Zones (SEZ)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: Los Angeles, Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Moro, Rico Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburg
Rhode Island: Providence
South Carolina: Charleston
South Carolina: Williamsburg County*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Watch
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

Enhanced Enterprise Communities (EEC)

California: Oakland
Massachusetts: Boston
Missouri/Kansas: Kansas City, Kansas City
Texas: Houston

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BILLING CODE 4000–01–P

[CFDA No.: 84.184D]

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

To fund projects that develop and implement, expand, or enhance innovative programs designed to accomplish one or more of the following: (1) infuse research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth; (2) remove firearms and other weapons from schools; (3) prevent truancy and address the needs of youth who are out of the education mainstream, or (4) prevent violent, aggressive, intimidating, or other disruptive behavior arising out of bullying, sexual harassment, or other cause.

Eligible Applicants: Public and private nonprofit organizations and individuals.

Deadline for Transmittal of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 2, 1996.

Available Funds: $10,000,000.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(**Note:** As of July 1, 1995, Part 86 of EDGAR no longer applies to SEAs and LEAs. It continues to apply to IHEs. This change results from the Improving America's Schools Act of 1994, Pub.L. 103–382.)

Description of Program

The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The Safe and Drug Free Schools Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

Public and private nonprofit organizations and individuals receiving funds under this program may not use funds for construction (except for minor remodeling needed to carry out the activities described in the application) and medical services, drug treatment or rehabilitation, except for pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs.

The term 'nonprofit', as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Background

Creating safe, disciplined, and drug-free learning environments for all students is essential to those students achieving to high academic standards and schools promoting educational excellence. It is clear, however, that in too many of our schools, students, teachers, and staff feel threatened, are abused, or are victims of violent acts. In addition, drug use among young people threatens their health and their ability to master new information. This announcement addresses four priorities designed to create safe, disciplined, and drug-free learning environments for all students.

Priority 1 seeks to infuse research-based knowledge about "what works" into the design, development and implementation of school-based strategies to prevent drug use among youth. This priority supports collaboration between local educational agencies and research institutions, including institutions of higher education, to develop and implement effective research-based programs and strategies to prevent youth drug use.

Drug use by adolescents has increased significantly in each of the last several years, reversing downward trends noted between 1979 and 1991. The 1995 "Monitoring the Future" study conducted by the Institute for Social Research at the University of Michigan documented the fourth consecutive year of increases in drug use among 8th graders and the third consecutive year of increases among 10th and 12th graders.

Equally alarming, two important determinants of drug use, perceived harmfulness of drugs and peer disapproval of drug use, are moving in the wrong direction. The proportion of students seeing drugs as dangerous continued to decline in 1995, while the norms against using illicit drugs generally have been softening in recent years. These trends have lead Dr. Lloyd Johnston, principal investigator for the Monitoring the Future survey, to suggest that we are in a "relapse" phase in the longer-term epidemic of youth drug use. Among the reasons that may account for this relapse are (1) decreased national attention to drug use among youth, and (2) failure to design and implement drug prevention programs of demonstrated effectiveness based on findings from research.

This priority directs funds to the development and implementation of innovative, research-based drug prevention strategies for effectively dealing with alcohol and other drug problems identified by schools and school districts. Strategies to be employed by applicants could vary from implementing or enhancing prevention curricula to integrating drug and alcohol prevention activities into the overall operation of the school and redesigning professional development, but should be based upon current, up-to-date research.

Examples of prevention approaches that research has demonstrated as effective, and that applicants might propose to develop and implement, are social influence approaches that include resistance skills training, and approaches that focus on personal and social skills training. Gilbert Botvin, Director of the Institute for Prevention Research at the New York Hospital-Cornell Medical Center, in a 1992 article entitled "School-Based and Community-Based Prevention Approaches," notes that resistance skills approaches "generally teach students how to recognize situations in which they will have a high likelihood of experiencing peer pressure to smoke, drink, or use drugs so that these high-risk situations can be avoided. In addition, students are taught how to handle situations in which they might experience peer pressure to engage in substance use."

Personal and Social Skills training models tend to be more comprehensive than other approaches. According to Botvin, they are based on "social learning" theory and "problem

behavior" theory. "Substance abuse is conceptualized as a socially learned and functional behavior, resulting from the interplay of social and personal factors. Substance use behavior is learned through modeling and reinforcement and is influenced by cognitions, attitudes, and beliefs * * *. The intent of these programs is to teach the kind of generic skills for coping with life that will have a relatively broad application * * * in contrast to the resistance skills training approaches which are designed to teach skills with a problem-specific focus."

Priority 2 invites applications for innovative, research-based strategies to remove firearms and other weapons from schools. A small but growing number of students find bringing a weapon to school acceptable. A Centers for Disease Control study reports that, in 1990, 1 in 24 students carried a gun to school in the 30 days before the study, and by 1993 the incidence had risen to 1 in 12 students. A 1993 Louis Harris poll showed that 35 percent of children aged 6 to 12 fear their lives will be cut short by gun violence. Knives or other devices used to inflict intentional injury also are increasingly evident in schools.

The Gun-Free Schools Act of 1994 requires States that receive funds under the Elementary and Secondary Education Act of 1965 (ESEA) to have in effect a law requiring local educational agencies to expel from school for a period of not less than one year students who are determined to have brought a weapon to school. Local educational agencies that receive ESEA funds are required to refer to the criminal justice or juvenile delinquency system any student who brings a firearm or weapon to school. Under the Gun-Free Schools Act, "weapon" means a firearm. For purposes of this grant program, however, a weapon may also be a knife, club, or other device used to inflict intentional injury.

Priority 3 encourages innovative, research-based programs to prevent truancy and address the needs of youth who are out of the education mainstream. For too many of our young people, regular school attendance and high school graduation are no longer the norm. In addition to truants, youth out of the education mainstream include dropouts, children who are afraid to go to school, children who have been suspended or expelled, and children in the juvenile justice system who need to maintain or enhance their educational status and be reintegrated into the school system upon their release from residential placement. Among the reasons for truancy that have been identified are student drug use, violence in or near the school, association with friends who are truant or absent, lack of family support for regular school attendance, and inability to keep pace with academic requirements.

The social and personal costs of failure to attend school are clear. Truancy and dropping out of school are significant risk factors for delinquency and eventual adult criminality. In 1992, on a national basis, juveniles accounted for 18 percent of all violent crime arrests and 33 percent of all serious property crime reports. Many of the arrests occur between 10 a.m. and 4 p.m. Monday through Friday when these juveniles should be in school.

Priority 4 addresses innovative, research-based approaches to preventing violent, aggressive, intimidating, or other disruptive behavior arising from bullying, sexual harassment, or other cause. Creating a safe and disciplined school environment that is conducive to learning is critical to achieving high standards for all students and developing a highly skilled and motivated workforce able to compete in a global economy.

When violent, aggressive, intimidating, or other disruptive behavior occurs in classrooms, on school grounds, or in the community, teachers are diverted from their primary task of teaching, students are unable to achieve to their full potential, and parents may fear to send their children to school. Bullying behavior, which may manifest itself at an early age, presents an important challenge for educators and other youth-serving professionals. Evidence suggests that schoolyard bullies who are not taught how to behave and cope with frustration are very likely headed for a lifetime of failure and involvement in the justice system. Research shows that a disproportionately high number of these children underachieve in school or drop out, perform below potential throughout their careers, land in prison for committing adult crimes, and become abusive spouses and parents. The earlier young people begin to exhibit problem behaviors, the greater the risk that they will become serious chronic delinquents and substance-abusing or alcoholic individuals. Victimization also is a serious problem because it can be a major distraction from the whole educational process. Bullying affects school attendance and the overall campus climate and safety. Victims understandably fear school itself and the abuse they know awaits them there.

Violent, aggressive, intimidating, or other disruptive behavior arising out of sexual harassment undermines the ability of schools to provide a safe and equitable learning or workplace environment. According to a 1993 survey by the American Association of University Women ("Hostile Hallways"), 85 percent of girls and 76 percent of boys surveyed say they have experienced unwanted and unwelcome sexual behavior that interferes with their lives. Among the outcomes of sexual harassment are not wanting to attend school, decreased class participation, greater difficulty paying attention in school, lower grades, and feeling afraid or scared.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** and repeated below, apply to this competition.

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Note: The purpose of these priorities is to give applicants flexibility to develop and implement programs that are most responsive to local school districts' identified needs for drug and violence prevention activities. Applicants must address at least one of the following priorities and may address more than one.

Absolute Priority 1—Infusing research-based knowledge about "what works" into the design, development and implementation of school-based strategies to prevent drug use among youth.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Identify the age groups to be served and describe how the proposed activities are appropriate for the target population;

(3) Provide evidence of collaboration between a local educational agency (LEA) and a research institution in the design and implementation of activities, including a description of the roles and responsibilities of each; and

(4) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 2—Removing Firearms and other Weapons from School.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe techniques the applicant will use to identify and remove firearms and other weapons that are brought into school;

(3) Provide information that demonstrates the extent to which the applicant has involved local, State, and/or Federal law enforcement agencies, as appropriate, in the development and implementation of innovative strategies to prevent firearms and other weapons from coming into school;

(4) Describe how the applicant will provide for referrals to the juvenile justice system of youths who are found to possess a firearm, consistent with the provisions of the Gun-Free Schools Act; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 3—Preventing Truancy and Addressing the Needs of Youth Who are Out of the Education Mainstream.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the problem that will be addressed including an assessment of the number of students who will benefit from the project;

(3) Indicate how the activities are appropriate for returning truant and other youth who are out of the education mainstream to the classroom and ensuring their educational progress;

(4) Provide information on the extent to which the following will be involved in the development and implementation of activities funded by this grant: parents, students, local law enforcement officials, including, as appropriate, juvenile justice authorities, and other youth-serving organizations in the community; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 4: Preventing Violent, Aggressive, Intimidating or Other Disruptive Behavior Arising from Bullying, Sexual Harassment or Other Cause.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the behaviors that the program seeks to correct, including an assessment of the types and frequency of violent, aggressive, intimidating, or other disruptive behavior among youth to be served;

(3) Identify the child development framework used to identify appropriate strategies for intervening in violent, aggressive, intimidating, or other disruptive behavior;

(4) Provide information on the extent to which educators, law enforcement officials, parents, and students have been involved in the development and implementation of interventions for youths who engage in violent, aggressive, intimidating, or other disruptive behaviors and for youths who are victims of such behaviors; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Competitive Preference Priority

Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and the Safe and Drug-Free Schools and Communities Act, gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority. These points are in addition to any points the application earns under the evaluation criteria for the program.

(Note: The total number of points an application may earn is 105):

Projects in an Empowerment Zone or Enterprise Community

In order to meet the competitive preference priority, applicants must—

(1) Propose projects that meet one or more of the four absolute priorities for this competition;

(2) Demonstrate that the project will be carried out in an Empowerment Zone (EZ) or Enterprise Community (EC) designated in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993 or that it will primarily serve students who reside in an EZ or EC; and

(3) Describe how the proposed project is linked to the EZ/EC strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community Program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*— (1) *Meeting the purposes of the authorizing statute.* (30 Points) the Secretary reviews each application to determine how well the project will meet the purpose of the Safe and Drug-Free Schools and Communities Act of 1994 including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Safe and Drug-Free Schools and Communities Act of 1994.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Safe and Drug-Free Schools and Communities Act of 1994, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be received by the date indicated in this notice at the following address: The Secretary, E.O.12372—CFDA # 84.184D, U.S. Department of Education, Room 6213, 600 Independence Ave., SW, Washington, D.C. 20202–0125.

Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal and receipt of applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.184D), Washington, D.C. 20202–4725.

Note: All applications must be received by August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.184D), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

Notes

(1) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(2) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not he transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Charlotte D. Gillespie, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington,

D.C. 20202–6123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases); or on the World Wide Web at (http://www/ed/gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 8 4D

TITLE: Federal Activities Grants Program (Drug and Violence Prevention)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b Title	c. Telephone number
d Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Part III—Application Narrative

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being required and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1810–0551, Exp. Date: 9/11/96. The time required to complete this information collection is estimated to average 28 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Charlotte D. Gillespie, Safe and Drug-Free Schools Program, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Ave., S.W., Washington, D.C. 20202–6123.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant; I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

BILLING CODE 4000-01-C

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–16838 Filed 6–28–96; 9:01 am]
BILLING CODE 4000–01–M

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Federal Register

Vol. 61, No. 128

Tuesday, July 2, 1996

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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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Animal and Plant Health Inspection Service

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  - Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96

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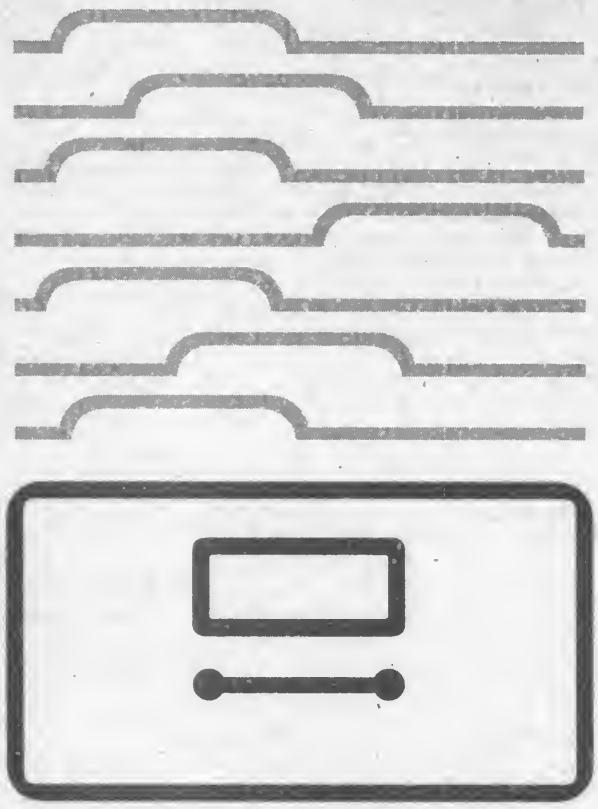

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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