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Contents

Federal Register

Vol. 63, No. 140

Wednesday, July 22, 1998

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
300 39209
319 39209
1940 39452
3565 39452

8 CFR
211 39217

12 CFR
611 39219
615 39219
620 39219
627 39219

14 CFR
39 (3 documents) 39229, 39231, 39232
71 (2 documents) 39233, 39234

Proposed Rules:
39 (3 documents) 39244, 39252, 39254

33 CFR
100 39235
165 (2 documents) 39236, 39237

Proposed Rules:
165 39256

39 CFR
111 39238

40 CFR
81 39432
455 39440

Proposed Rules:
52 39258
81 39258
455 39444
745 39262

45 CFR

Proposed Rules:
286 39366
287 39366

46 CFR

Proposed Rules:
503 39263

48 CFR
401 39239
402 39239
403 39239
407 39239
408 39239
409 39239
411 39239
416 39239
419 39239
422 39239
424 39239
425 39239
432 39239
434 39239
436 39239
452 39239

50 CFR
679 (6 documents) 39240, 39241, 39242

Rules and Regulations

Federal Register
Vol. 63, No. 140
Wednesday, July 22, 1998

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–016–2]

RIN 0579–AA88

Importation of Tomatoes From France, Morocco and Western Sahara, Chile, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to allow tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. This action provides importers and consumers in the United States with additional sources of tomatoes, while continuing to provide protection against the introduction and dissemination of injurious plant pests. We are also amending the regulations pertaining to importation of tomatoes from Spain by requiring containers of pink or red tomatoes to be sealed before shipment if the containers will transit any other fruit fly supporting areas while en route to the United States, and by requiring records to be kept by Spain's plant protection service regarding trapping practices and fruit fly captures. These actions are necessary to prevent the introduction of exotic fruit flies into the United States.

DATES: This final rule is effective July 22, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald C. Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799; fax (301) 734–5786; e-mail: rcampbell@aphis.usda.gov.

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 plant pests, including fruit flies, that are new to or not widely distributed within the United States.

On October 16, 1997, we published in the **Federal Register** (62 FR 53761–53769, Docket No. 97–016–1) a proposal to amend the regulations by allowing fresh tomatoes (*Lycopersicon esculentum*) to be imported into the United States from France, Morocco and Western Sahara, and Chile under specific conditions. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicated the tomatoes could be imported under these conditions without presenting any significant risk of introducing fruit flies or other injurious plant pests into the United States. We also proposed to amend the regulations concerning the importation of tomatoes from Spain by requiring containers of pink or red tomatoes to be sealed before shipment if the containers were to transit other fruit-fly supporting areas en route to the United States and by requiring records to be kept by Spain's plant protection service regarding trapping practices and fruit fly captures.

We solicited comments concerning our proposal for 60 days ending December 15, 1997. We received seven comments by that date. They were from representatives of State and foreign governments and producer organizations, and a university professor. One comment was favorable to the proposal. The other commenters expressed various concerns about our proposal, all of which are discussed below.

Comment: The proposal to allow importation of pink tomatoes from Morocco and Western Sahara does not consider the presence of fruit flies other than the Mediterranean fruit fly (Medfly). West Africa and North Africa are home to numerous other fruit fly species. Also, two moth species, the Old World bollworm or tomato worm, *Helicoverpa armigera* (Huber), and the tomato moth, *Lacanobia oleracea* (L.), could be transported into Florida on tomatoes from these areas.

Response: We are making no changes to the proposed rule in response to this comment. With respect to fruit fly species other than Medfly, our pest risk assessment indicates that tomatoes are not a host to other fruit fly species found in Morocco and Western Sahara. We believe that the proposed pest mitigation measures developed for tomatoes from Morocco and Western Sahara will reduce to an insignificant level the risk of introducing Medfly and other insect pests, including moth species, into the United States. Pink tomatoes from Morocco and Western Sahara will be grown in insect-proof greenhouses where the tomatoes are protected from insects throughout the growing season. Post-harvest safeguards required by the rule, including covering of the fruit by a fruit fly-proof mesh screen or plastic tarpaulin prior to packing, and packing in fruit fly-proof containers, will continue to protect the tomatoes from insects.

Additionally, in accordance with § 319.56–6 of the regulations, all shipments of fruits and vegetables imported into the United States are inspected at the port of arrival for injurious plant pests. Both *Helicoverpa armigera* (Huber) and *Lacanobia oleracea* (L.) are visually detectable by inspection. If a shipment of tomatoes from Morocco and Western Sahara is determined to be infested with either of these pests, or any other pest of concern, that shipment will either be disinfested (e.g., cleaned or fumigated), destroyed, or reexported. If a specific pest continually appears in shipments of tomatoes from Morocco and Western Sahara, we will consider amending our regulations to require that measures be taken in Morocco and Western Sahara to mitigate the presence of that pest.

[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** or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

Comment: Green tomatoes are authorized entry into the United States because they are not subject to attacks by Medfly. Therefore, if tomatoes are loaded in Spain while "green" (green or breaker), are shipped to the United States under controlled conditions, and are lightly colored upon arrival in the United States, there is no phytosanitary justification to prohibit entry. The Animal and Plant Health Inspection Service (APHIS) should, therefore, remove the requirement that tomatoes be green upon arrival in the United States.

Response: Tomatoes in general are considered poor hosts for Medfly, and we agree that green tomatoes are not Medfly host material. However, breaker tomatoes (fruit in the initial stages of ripeness) are hosts, albeit poor ones. Because green tomatoes are not required to be safeguarded in any way while in transit to the United States, there is potential for ripening tomatoes that transit areas where Medfly exists to become infested. Therefore, we are requiring that green tomatoes be green upon arrival in the United States as an additional precaution against infestation. Consequently, we are making no changes to the proposed rule in response to this comment.

Comment: APHIS states in the preamble to the proposed rule that tomatoes will be subject to inspection and disinfection at the port of first arrival as may be required by a United States Department of Agriculture (USDA) inspector. This means that the regulations do not explicitly require inspection of imported tomatoes. In other words, tomatoes may be imported into the United States from Medfly-infested areas without being inspected by APHIS inspectors. Thus, the risk of introducing the Medfly and other injurious plant pests into the United States is much greater than APHIS suggests.

Response: We proposed to allow tomatoes to be imported into the United States from France, Morocco and Western Sahara, and Chile under a combination of phytosanitary measures that constitute a framework of overlapping, redundant safeguards. In the case of tomatoes from France and Morocco and Western Sahara, where the pest of concern is the Medfly, these measures include safeguards to protect the tomatoes from Medfly infestation while they are growing, as well as after harvest. In the case of tomatoes from Chile, where the primary pests of concern are the tomato fruit moth and the tomato fruit fly, the measures include treatment with methyl bromide. These measures would be applied in the exporting country, and would, in and of themselves, be expected to reduce the risk of the tomatoes introducing plant pests, including Medfly, to a negligible level. As an additional precaution, the tomatoes would be subject to § 319.56–6 of the regulations, which provides for inspection of all imported fruits and vegetables at the port of arrival in the United States. While not every piece of imported fruit or vegetable is examined upon its arrival in the United States, a certain amount of fruits or vegetables from each shipment is inspected by USDA inspectors stationed at the ports. The amount inspected is based on the potential pest risk, including whether there have been past pest interceptions in similar shipments. In accordance with § 319.56–6, if an inspector finds evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner of the produce or the owner's agent must clean or treat the produce as required by an inspector. The inspector may require additional inspection, cleaning, and treatment at any time and place. If an inspector finds that an imported fruit or vegetable is so infested that, in the judgment of the inspector, it cannot be cleaned or treated, or if it contains soil or other contaminants, or if it otherwise fails to meet conditions of the regulations for entry into the United States, the entire lot will be refused entry. It is our contention that this combination of safeguards will reduce the risk of pest introduction, including Medfly introduction, to a negligible level.

Comment: The pest risk assessments listed a number of pests that might accompany these shipments of tomatoes from France, Morocco and Western Sahara, and Chile. The species listed were mostly given a high rating in terms of pest potential, yet the only mitigation offered is visual inspection upon arrival. Visual inspection, when suitably and properly performed will likely find many of these pests. But, these inspections are not being performed as thoroughly and as often as necessary, and, the discovery of nymphs or other immature stages that cannot be clearly identified taxonomically usually results in nonaction.

Response: As explained in the response to the previous comment, every shipment of imported fruits and vegetables is inspected at the port of first arrival. While the number of individual fruits and vegetables examined in a shipment varies depending upon various factors related to pest risk (e.g., the types of pests that we would expect to be associated with the shipment, history of past pest interceptions), we believe the inspections are adequate to detect pests if they are present in a shipment. It is not true that no action is taken if a pest cannot be clearly identified taxonomically. If the life stage of a pest, or any other factor, prevents an inspector from making an identification at the port, our policy is to require cleaning or treatment of the infested commodity, if feasible, or to refuse entry. Concurrently, unidentified pests are often sent on to USDA laboratories, and sometimes other Federal laboratories, for positive identification so that we are aware of any new potential pest risk that may be associated with similar shipments in the future.

Comment: Increased imports from Medfly-infested areas will increase the risk of introducing the Medfly and other devastating plant pests into the United States, which places U.S. agriculture and agricultural trade in jeopardy. Allowing this increased risk is contrary to APHIS' obligations under the Federal Plant Pest Act and the Plant Quarantine Act.

Response: Both the Federal Plant Pest Act and the Plant Quarantine Act prohibit the movement of articles covered by those Acts, unless the movement is made in accordance with such regulations as the Secretary of Agriculture may promulgate to prevent the dissemination of plant pests into the United States or interstate. As explained earlier in this document and in the proposed rule, we believe that this rule will effectively reduce the risk of the introduction of Medfly and other plant pests into the United States to an insignificant level. Therefore, we are making no changes to the proposal in response to this comment.

Comment: There appears to be no way for APHIS to ensure that pink tomatoes come only from Almeria Province in Spain, El Jadida and Safi Provinces in Morocco, or Dahkla Province, Western Sahara. Additionally, the requirement that the tomatoes to be shipped be no more than 30 to 60 percent pink or red is too subjective. Such a standard is subject to abuse.

Response: Our proposal provided that pink tomatoes may be imported into the United States from Morocco and Western Sahara only if they are produced in insect-proof greenhouses in El Jadida and Safi Provinces, Morocco, or Dahkla Province, Western Sahara, that are registered with and inspected by the Moroccan Ministry of Agriculture. Additionally, a phytosanitary certificate will be

required for tomatoes from Morocco and Western Sahara to ensure the tomatoes were produced in a registered greenhouse. We believe that this requirement adequately ensures that pink tomatoes from other areas of Morocco and Western Sahara will not be exported to the United States. Similar requirements are already in place for tomatoes from the Almeria Province of Spain, and there have been no problems. Additionally, the description of a pink tomato as having a surface area more than 30 percent but not more than 60 percent pink and/or red corresponds to standard industry color scales for tomato ripeness. Consequently, we do not expect any confusion about what constitutes a pink tomato eligible for importation into the United States from Spain, Morocco and Western Sahara. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: Tomatoes from Chile must be treated with methyl bromide in facilities regulated by the Servicio Agricola y Ganadero (SAG). We expect the equipment and facilities to be approved and monitored by APHIS personnel.

Response: The commenter's expectation is correct. In our proposal, we explicitly stated that the tomatoes must be treated in Chile with methyl bromide in accordance with the PPQ Treatment Manual, and that the treatment must be conducted in facilities registered with SAG and with APHIS personnel monitoring the treatments.

Comment: APHIS states that if the proposed rule is adopted, it will preempt State and local laws regarding tomatoes imported under this rule because tomatoes remain in foreign commerce until sold to the ultimate consumer. The U.S. Customs Service has determined with regard to tomatoes sold in retail grocery stores that the ultimate consumer is in fact the retail grocery store and not the retail grocery store customer. Further, the Suspension Agreement entered into between the Department of Commerce and the foreign producers and shippers that send tomatoes to the United States requires that the tomatoes be sold at a reference price to importers or buyers other than consumers. Thus, it is incorrect for APHIS to conclude that this order preempts State and local laws.

Response: The position of the USDA is that fresh fruits and vegetables imported for immediate sale, such as tomatoes, remain in foreign commerce until sold to the ultimate consumer. The U.S. Customs Service, for the purposes of the Tariff Act of 1930, as amended, has defined "ultimate purchaser" for imports from non-North American Free Trade Agreement countries as "generally the last person in the United States who will receive an article in the form in which it is imported" (19 CFR 134.1(d)). The Custom Service's position, while not controlling in USDA's administration of its own statutes, is not inconsistent with USDA's position. Further, the Suspension Agreement referenced by the commenter refers to an agreement between the United States and Mexican tomato growers as to the minimum prices that Mexican tomato growers can charge for tomatoes exported to the United States. The agreement arose out of an anti-dumping case and is unrelated to USDA's determination as to when foreign commerce ceases under the plant quarantine laws for tomatoes imported from France, Morocco and Western Sahara, Chile, and Spain.

Comment: The current provisions concerning tomatoes from the Almeria Province of Spain require Medfly trapping at a rate much higher than that proposed for Brittany, yet the risk is characterized as equivalent. Therefore, the trapping requirement should be the same. In any case, the proposal for just one trap inside and one trap outside the greenhouse in Brittany does not appear to be adequate. In addition, there is no mention as to how the two life-cycle time period will be determined. Will this be based on a specific time interval or a life-cycle model? And, treatments, where necessary, should continue for two life-cycles rather than 60 days. It appears that this will be a requirement for France, but not for Morocco.

Response: We disagree that the risk is equivalent between Almeria Province, Spain, and the Brittany region of France. Unlike the Almeria Province of Spain, the climate in Brittany is temperate and not suitable to support a permanent Medfly population. Medfly does, however, occur in southern France and could be temporarily introduced into Brittany during the summer months. Therefore, trapping in France is a precaution related to the summer months. Trapping inside and outside each greenhouse in Brittany is adequate due to the fact that Medfly is not known to occur in Brittany and climatic conditions prevent the establishment of a permanent population.

Furthermore, the two life-cycle model has not been proposed for either France or Morocco and Western Sahara, because export decisions will not be based on true area freedom for Medflies. Requirements that Malathion bait sprays be applied over a 60-day period when 2 Medflies are trapped within 200 meters of a registered greenhouse within a 1-month time period is an additional safeguard for tomatoes from Morocco and Western Sahara. This provision is one of several overlapping safeguards in the systems approach that has been developed to ensure that Medflies and other exotic insect pests do not enter the United States with tomatoes from Morocco and Western Sahara. It should not be confused with the two life-cycle model that has been used by APHIS in other regulations. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: The tomato fruit fly, *Rhagoletis tomatis*, does not occur in central Chile. Consequently, tomatoes grown between the 4th and 7th Regions should be enterable into the United States subject only to methyl bromide fumigation for the tomato fruit moth (*Scrobopalpula absoluta*). The 4th through 7th Regions of Chile should be declared a *Rhagoletis tomatis* free zone.

Response: Due to the absence of internal controls for transporting tomatoes between different regions of Chile, we do not believe that the 4th through 7th Regions of Chile should be declared a *Rhagoletis tomatis* free zone. Furthermore, declaration of the 4th through 7th Regions of Chile as *Rhagoletis tomatis* free would not change any of the treatment requirements for tomato shipments from Chile to the United States due to the endemic presence of the tomato fruit moth, *Scrobopalpula absoluta*. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: The proposed regulations would require tomatoes from Chile to be treated with methyl bromide and packed within 24 hours of harvest, then packed in fruit-fly-proof containers for transit to the airport for shipment to the United States, and all these activities would have to be conducted under the monitoring of an APHIS inspector. Because these preclearance activities will be taking place in Chile, we believe that shipments of tomatoes from Chile should not be subject to the port-of-arrival inspection requirements of § 319.56–6.

Response: As noted in the response to a previous comment, every shipment of fruits and vegetables, as a condition of entry into the United States, is inspected at the port of first arrival in accordance with § 319.56–6 of the regulations. Although every vegetable or piece of fruit might not be examined, a certain number of fruits or vegetables from each shipment is inspected, based on the potential pest risk. That potential

risk may be mitigated to a large degree by preclearance measures such as those required for Chilean tomatoes, but we will not grant a blanket exemption from port-of-arrival inspection to any commodity on that basis because of possible infestations en route and the necessity to spot check to verify that prescribed safeguards are followed. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule will facilitate the movement of fresh tomatoes into the United States, providing additional sources of tomatoes for U.S. importers and increasing the supply of fresh tomatoes in the U.S. marketplace. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and the Regulatory Flexibility Act

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

This rule allows tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. This action will provide importers and consumers in the United States with additional sources of tomatoes, while continuing to provide protection against the introduction and dissemination of injurious plant pests. This rule also makes some minor changes to the provisions for importing tomatoes from Spain, but these changes are not expected to have any effect on the volume of tomatoes imported from Spain, and, therefore, are not expected to have any economic impact. Under the Federal Plant Pest Act and the Plant Quarantine Act (7 U.S.C. 150dd, 150ee, 150ff, 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

During 1995 about 12.3 million metric tons of tomatoes were supplied to the U.S. market. Domestic production accounted for about 95.4 percent of total supply. About 2.1 million metric tons (17 percent) of the total quantity of tomatoes supplied to U.S. consumers during 1995 were marketed as fresh tomatoes. Imports from Spain accounted for less than one-tenth of one percent of the total quantity of tomatoes supplied to U.S. consumers during 1995. Imports from Spain also accounted for less than one-tenth of one percent of the total quantity of fresh tomatoes supplied to U.S. consumers during 1995. Prices and sources of tomatoes supplied to the U.S. market are summarized in the following table:

Source of U.S. tomato supply	Quantity (metric tons)	Total value ($1,000,000)	Average value per metric ton	Percent of total quantity supplied [1]
Domestic production:				
Fresh market	1,489,613	$853.9	$573.20	12.1
Processed market	10,229,601	725.1	70.88	83.3
Imports:				
Fresh market	559,117	406.1	725.41	4.6
Processed market				
Total supply	12,278,988	1,985.1	161.77	100.0

[1] Percentage column may not sum due to rounding.
Sources: Agricultural Statistics 1995–96; Table 233 (figures converted to metric tons); USDA–NASS; Washington, DC.
Foreign Agriculture Trade of the United States—FY 1995 Supplement; Table 25; USDA–ERS; Washington, DC.

We estimate that the annual quantity of tomatoes supplied to the U.S. market will increase by about 13,700 metric tons under this rule. About 6,000 metric tons are expected from Chile; the remaining 7,700 metric tons will arrive from France and Morocco and Western Sahara.

Tomato imports from Morocco and Western Sahara will be restricted to arrival during winter months. Imports from Chile and France will be allowed entry throughout the year. However, Chilean tomatoes are expected to be imported primarily during the winter months due to seasonal growing differences between the northern and southern hemispheres, and shipments from France are likely to fill a special market niche for high quality fresh tomatoes.

Therefore, imported tomatoes from France, Morocco and Western Sahara, and Chile will compete primarily with existing imports and domestic tomatoes produced during the winter months. Price discrepancies between the import and domestic markets indicate that imports cannot compete with domestic supplies unless they arrive during the winter months or for specialty markets. Prices for all tomatoes supplied to the U.S. market during 1995 averaged about $161.77 per metric ton. Prices for domestic production averaged about $573.20 per metric ton for fresh tomatoes and $70.88 per metric ton for processed tomatoes. By contrast, the value of imported tomatoes averaged $725.41 per metric ton during 1995. Spanish imports, which arrive during the winter and early spring (December 1 through April 30), averaged $1,695 per metric ton during the same year. This price discrepancy is likely due to the relatively high quality of winter tomato imports from Spain. During winter months, there may be some U.S. producers in Florida and other States who grow field or greenhouse tomatoes at higher than average prices. However, this price differential is not reflected in the data. Additionally, published price data for imported tomatoes does not include shipping costs. If these costs were incorporated into imported tomato prices, the average price discrepancy between domestic and imported prices would likely be greater. Specific prices for imported fresh tomatoes from various countries and regions are summarized in the following table:

Source of imported tomatoes	Quantity (metric tons)	Total value (1,000,000)	Average value per metric ton
Canada	11,098	$16.1	$1,452.92
Mexico	534,345	366.4	685.67
Other Latin America	53	0.03	525.17
Netherlands	11,238	18.8	1,674.29
Belgium/Luxembourg	1,195	1.2	2,166.81
Spain	657	1.1	1,695.29
Other Western Europe	12	0.02	1,447.61
Asia	1,174	1.0	844.15
Africa	2	0.002	1,175.00
Total imports	559,774	406.1	725.41

Note: Shipping cost not included. Columns may not sum due to rounding.
Source: Foreign Agriculture Trade of the United States—FY 1995 Supplement; Table 25; USDA–ERS; Washington, DC.

Our economic analysis first estimated the potential impact of this rule on total U.S. tomato production and then estimated the potential impact on U.S. production of fresh tomatoes.

The estimated impact on total tomato production was determined by assuming that all of the increase in imports expected as a result of this rule were directly substitutable for domestic supplies. In that case, domestic producers could experience a decline in tomato prices from $161.77 per metric ton to $161.45 per metric ton, or $0.32 per metric ton. This estimate assumes a perfectly inelastic supply, a demand elasticity of −0.5584[2], an initial quantity supplied of 12.3 million metric tons, and an increase in imports of 13,700 metric tons. This price decrease would result in a total revenue decrease for U.S. producers of $3,929,277, or about 0.2 percent of the total value of domestic tomato production. The price decrease would increase consumer welfare by $3,931,469, resulting in a positive, albeit small, net impact to U.S. society totaling about $2,192. Foreign producers would realize a gain of about $2,211,865.

If the impact were restricted to the fresh market, domestic producers could experience a decline in fresh tomato prices from $614.76 per metric ton to $607.40 per metric ton, or $7.36 per metric ton. This estimate assumes a perfectly inelastic supply, a demand elasticity of −0.5584[2], an initial quantity supplied of 2.1 million metric tons, and an increase in imports of 13,700 metric tons. This price decrease would result in a total revenue decrease for U.S. fresh tomato producers of $15,083,488, or about 1.8 percent of the total value of domestic fresh tomato production. The price decrease would increase consumer welfare by $15,133,904, resulting in a positive net impact to U.S. society totaling about $50,416. Foreign producers would realize a gain of about $8,321,380. Estimated welfare impacts for both the entire and fresh U.S. tomato markets are summarized in the following table:

U.S. tomato market	U.S. consumer gain	U.S. producer revenue loss	Net gain to U.S. society	Foreign producer gain
Entire market[1]	$3,931,469	$3,929,277	$2,192	$2,207,070
Fresh market	15,133,904	15,083,488	50,416	8,321,380

[1] Includes all tomatoes consumed in both the processed and fresh markets.

In summary, this rule will provide U.S. consumers with additional sources of tomatoes during winter months and for specialty markets. Domestic producers who propagate field or greenhouse tomatoes during the winter months may be slightly affected. However, the relatively low volume of expected imports (13,700 metric tons with a maximum value of $8.3 million) is unlikely to significantly erode the market share of domestic producers.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of this rule on "small" entities. The SBA has set forth size criteria by Standard Industrial Classification (SIC), which were used as a guide in determining which economic entities meet the definition of a "small" business.

The SBA does not maintain specific size standards for domestic entities that either import or produce tomatoes. Therefore, this analysis uses the size standards established for Vegetable and Melon Producers (SIC code 0161) and Wholesale Traders of Fresh Fruits and Vegetables (SIC code 5148). The SBA's definition of a "small" entity included in the vegetable and melon producer classification is one that generates less than $500,000 in annual receipts.[3] Wholesale traders of fresh fruits and vegetables are classified as "small" if they employ fewer than 100 people.

Currently there are about 15,438 "small" fruit and vegetable producers and 5,122 "small" wholesale traders of fresh fruits and vegetables, according to the SBA criteria. The rule could negligibly impact some "small" domestic entities. However, because the supply of tomatoes in the U.S. market will only increase by about 13,700 metric tons (less than one-tenth of one percent of total domestic supply) and domestic producers will continue to supply more than 95 percent of the tomatoes consumed in the United States each year, it does not appear that this rule will have a significant economic impact on a substantial number of small entities.

We solicited comments in our proposed rule on our Initial Regulatory Flexibility Analysis. We received several, which are discussed below.

[2] The demand elasticity is obtained from J.E. Epperson and L.F. Lei, "A Regional Analysis of Vegetable Production with Changing Demand for Row Crops Using Quadratic Programming," Southern Journal of Agricultural Economics, Volume 21, Number 1, July 1989, pp. 87–96.

[3] Small Business Administration; Washington, DC. SBA data was modified by tomato specific information contained in the 1992 Census of Agriculture.

Comment: These imports will compete directly with tomatoes produced in Florida. APHIS states that tomatoes produced in the fall and winter months are the off season, but this is not the off season for tomatoes produced in Florida. APHIS needs to specifically address potential impacts on Florida's winter tomato industry. Additionally, APHIS finds that even if tomatoes compete with domestically-produced tomatoes, the impact will be marginal due to the low volume of imports. We disagree with this conclusion as well because even a small increase in imports can have a large impact on the price of fresh tomatoes. Fresh tomatoes are extremely price-sensitive.

Response: We acknowledge that tomatoes imported from France, Morocco and Western Sahara, and Chile will compete with tomatoes produced during the winter in Florida and other States. We also acknowledge that fresh tomato prices are price sensitive. When potential economic impacts are restricted to the fresh tomato market, U.S. producers would likely incur a revenue loss of $15.1 million as a result of this rule change. This accounts for about 1.8 percent of the total annual value of fresh tomatoes supplied to U.S. consumers.

Florida producers produced about 344,105 metric tons of fresh tomatoes between December 1995 and April 1996. This accounted for about 54 percent of Florida's total annual harvest and about 16.8 percent of total fresh tomatoes supplied to the U.S. market during that period. The average price for Florida winter tomatoes between December 1995 and April 1996 was about $703.55 per metric ton. For this reason, it is likely that competition between imported and Florida grown tomatoes would be fairly limited due to the relatively large price discrepancy that exists between foreign and domestic markets. As previously mentioned, imported tomatoes are likely to fill a special market niche rather than substitute for domestic supply.

Comment: We question APHIS' use of SBA size standards established for melon and vegetable producers, and the conclusions reached using that data, in its Regulatory Flexibility Analysis for the proposed rule. Further, we dispute APHIS' statement that 95 percent of tomatoes marketed in the United States are produced domestically and the conclusions reached based on that figure.

Response: As explained above, we used size standards published by the SBA for Melon and Vegetable Producers (SIC code 0161) and Wholesale Traders of Fresh Fruits and Vegetables (SIC code 5148)—which include producers and wholesale traders of tomatoes—because the SBA does not maintain separate size standards that are specific to tomato producers or wholesale traders of tomatoes. We are not aware of any other published size standards for domestic tomato producers or wholesale traders of tomatoes, and the commenter did not offer any such information. Similarly, the commenter did not provide any supporting information or alternative figures when disputing the proposed rule's statement that 95 percent of the U.S. tomato supply is produced domestically. As noted in the proposed rule, we obtained that 95 percent figure from data published annually in USDA'S "Agricultural Statistics" and "Foreign Agricultural Trade of the United States."

Comment: There are several more current elasticity estimates that could be used for the economic analysis. Spreen *et al.* used a price flexibility of roughly −0.28 to estimate the impact of losing methyl bromide for the Florida vegetable industry (Spreen *et al.*, "Use of Methyl Bromide and the Economic Impact of Its Proposed Ban on the Florida Fresh Fruit and Vegetable Industry." University of Florida Ag. Exp. Sta. Bull. 898, 1995). Using that flexibility and the assumptions in the Initial Regulatory Flexibility Analysis for the proposed rule, the economic impact increases to more than $6.1 million. While this may pale in comparison to the overall U.S. industry, these increased imports concentrated on the winter fresh tomato industry could have more significant impacts. This is especially true noting the sensitivity of this industry to increased imports because of the recent anti-dumping case resolved by the suspension agreement signed by Mexican producers with the U.S. Government. These increased imports not only jeopardize the economic health of U.S. producers, but also jeopardize the suspension agreement with Mexico that suspended the anti-dumping case taken to the U.S. Department of Commerce and U.S. International Trade Commission.

Response: We agree that use of a different elasticity measurement would change the estimated net economic impact. The literature includes many examples of tomato elasticities and price flexibilities that have been calculated for specific States, regions, or seasons. The demand elasticity used in this analysis was originally developed to calculate potential economic impacts on a national scale and was, therefore, appropriate for this analysis.

Furthermore, the suspension agreement referenced by the commenter refers to an agreement between the United States and Mexican tomato growers as to the minimum prices that Mexican tomato growers can charge for tomatoes exported to the United States. The agreement arose out of an anti-dumping case and is not related to tomato imports from France, Morocco and Western Sahara, and Chile.

Comment: APHIS stated that tomatoes from France will fill a special market for higher quality fresh tomatoes. There is no basis in the record that tomatoes from France are higher quality tomatoes. Further, there is nothing in the record that indicates consumers want an additional source of tomatoes.

Response: The statement referred to by the commenter appeared in the Initial Regulatory Flexibility Analysis for the proposed rule. We said that tomatoes from France will be allowed entry throughout the year and that * * * "shipments from France are likely to fill a special market niche (for higher quality fresh tomatoes)." That statement was merely an explanation of how the French tomatoes may be marketed. This rulemaking is not based on either the quality of the potential imports or the demand for them. It only removes a regulatory barrier that does not appear necessary from a pest risk perspective. Other issues are beyond the scope of this rulemaking.

Comment: This proposed rule will harm U.S. producers who are still suffering from losses in excess of $750 million due to increased tomato imports from Mexico. The U.S. Department of Commerce found that tomatoes from Mexico were unfairly dumped into the U.S. market.

Response: Our economic analysis indicates that U.S. tomato producers could experience a revenue decrease of about $3.9 million. This accounts for about 0.2 percent of the annual value of U.S. tomato production. Specific impacts related to tomato imports from Mexico are not relevant to this rulemaking.

Executive Order 12988

This rule allows the importation of tomatoes from France, Morocco and Western Sahara, and Chile under certain conditions. State and local laws and regulations regarding tomatoes imported under this rule will be preempted while the fruit is in foreign commerce. Tomatoes are generally imported for immediate distribution and sale to the consuming public, and will 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. 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of tomatoes from France, Morocco and Western Sahara, and Chile will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

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

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0131.

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, and Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues 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), introductory text, is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(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 June 1998, 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 continues 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. In § 319.56–2t, the table is amended by revising the entry for Spain and by adding new entries for France and Morocco and Western Sahara, in alphabetical order, to read as follows:

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

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
*	*	*	* * * *
France	Tomato	(Lycopersicon esculentum).	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from the Region of Brittany and only in accordance with § 319.56–2dd of this subpart).
*	*	*	* * * *
Morocco and Western Sahara.	Tomato	(Lycopersicon esculentum).	Fruit, only if it is green upon arrival in the United States (pink fruit may only be imported from the El Jadida or Safi Province, Morocco, or Dahkla Province, Western Sahara, and only in accordance with § 319.56–2dd of this subpart).
*	*	*	* * * *
Spain	Tomato	(Lycopersicon esculentum).	Fruit, only if it is green upon arrival in the United States (pink or red fruit may only be imported from Almeria Province and only in accordance with § 319.56–2dd of this subpart).
*	*	*	* * * *

* * * * *

5. Section 319.56–2dd is revised to read as follows:

§ 319.56–2dd Administrative instructions: conditions governing the entry of tomatoes.

(a) *Tomatoes (fruit) (Lycopersicon esculentum) from Spain.* Pink or red tomatoes may be imported into the United States from Spain only under the following conditions: [1]

(1) The tomatoes must be grown in the Almeria Province of Spain in greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(2) The tomatoes may be shipped only from December 1 through April 30, inclusive;

(3) Two months prior to shipping, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all areas outside the greenhouses and within 8 kilometers, including urban and residential areas, MAFF must place Medfly traps at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(4) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse and within a 1-month time period will result in cancellation of exports from all registered greenhouses within 2 kilometers of the find until the source of infestation is determined and the Medfly infestation is eradicated;

(5) MAFF must maintain records of trap placement, checking of traps, and any Medfly captures, and must make the records available to APHIS upon request;

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. Transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by MAFF before shipment and the official seal number is recorded on the phytosanitary certificate; and

(7) MAFF is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by MAFF and bearing the declaration, "These tomatoes were grown in registered greenhouses in Almeria Province in Spain."

(b) *Tomatoes (fruit) (Lycopersicon esculentum) from France.* Pink or red tomatoes may be imported into the United States from France only under the following conditions: [2]

(1) The tomatoes must be grown in the Brittany Region of France in greenhouses registered with, and inspected by, the Service de la Protection Vegetaux (SRPV);

(2) From June 1 through September 30, SRPV must set and maintain one Medfly trap baited with trimedlure inside and one outside each greenhouse and must check the traps every 7 days;

(3) Capture of a single Medfly inside or outside a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation is eradicated, and measures are taken to preclude any future infestation;

(4) SRPV must maintain records of trap placement, checking of traps, and any Medfly captures, and must make them available to APHIS upon request;

(5) From June 1 through September 30, the tomatoes must be packed within 24 hours of harvest. They must be safeguarded by fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. At all times of the year, transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by SRPV before shipment and the official seal number is recorded on the phytosanitary certificate; and

(6) SRPV is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by SRPV and bearing the declaration, "These tomatoes were grown in registered greenhouses in the Brittany Region of France."

(c) *Tomatoes (fruit) (Lycopersicon esculentum) from Morocco and Western Sahara.* Pink tomatoes may be imported into the United States from Morocco and Western Sahara only under the following conditions: [3]

(1) The tomatoes must be grown in the provinces of El Jadida or Safi in Morocco or in the province of Dahkla in Western Sahara in insect-proof greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF);

(2) The tomatoes may be shipped from Morocco and Western Sahara only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In Morocco, traps must also be placed outside registered greenhouses within a 2 kilometer radius at a rate of four traps per square kilometer. In Western Sahara, a single trap must be placed outside in the immediate proximity of each registered greenhouse. All traps in Morocco and Western Sahara must be checked every 7 days;

(4) DPVCTRF must maintain records of trap placement, checking of traps, and any Medfly captures, and make the records available to APHIS upon request;

(5) Capture of a single Medfly in a registered greenhouse will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Capture of a single Medfly within 200 meters of a registered greenhouse will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of 2 Medflies within 200 meters of a registered greenhouse and within a 1-month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

[1] The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red. The surface area of a red tomato is more than 60 percent pink and/or red. Green tomatoes may be imported in accordance with § 319.56–2t of this subpart.

[2] See footnote 1 in paragraph (a) of this section.

[3] See footnote 1 in paragraph (a) of this section.

(6) The tomatoes must be packed within 24 hours of harvest. They must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packed in fruit fly-proof containers for transit to the airport and subsequent shipping to the United States. The tomatoes must be pink at the time of packing. Transit through other fruit fly supporting areas is prohibited unless the fruit fly-proof containers are sealed by the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE), before shipment and the official seal number is recorded on the phytosanitary certificate; and

(7) EACCE is responsible for export certification inspection and issuance of phytosanitary certificates. Each shipment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, "These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing" or "These tomatoes were grown in registered greenhouses in Dahkla Province, Western Sahara and were pink at the time of packing."

(d) *Tomatoes from Chile.* Tomatoes (fruit) (*Lycopersicon esculentum*) from Chile, whether green or at any stage of ripeness, may be imported into the United States only under the following conditions:

(1) The tomatoes must be treated in Chile with methyl bromide in accordance with the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The treatment must be conducted in facilities registered with the Servicio Agricola y Ganadero (SAG) and with APHIS personnel monitoring the treatments;

(2) The tomatoes must be treated and packed within 24 hours of harvest. Once treated, the tomatoes must be safeguarded by a fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and be packed in fruit fly-proof containers under APHIS monitoring for transit to the airport and subsequent shipping to the United States; and

(3) Tomatoes may be imported into the United States from Chile only if SAG has entered into a trust fund agreement with APHIS for that shipping season. This agreement requires SAG to pay in advance all costs that APHIS estimates it will incur in providing the preclearance services prescribed in this section for that shipping season. These costs will include administrative expenses incurred in conducting the preclearance services; and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement further requires that, if the initial deposit is not sufficient to meet all costs incurred by APHIS, SAG must deposit with APHIS another certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected end-of-season costs, SAG must deposit with APHIS a certified cashier's check sufficient to meet such costs as estimated by APHIS, before any further preclearance services will be provided. If the amount SAG deposits during a shipping season exceeds the total cost incurred by APHIS in providing preclearance services, the difference will be returned to SAG by APHIS at the end of the shipping season.

(Approved by the Office of Management and Budget under control number 0579–0131)

Done in Washington, DC, this 15th day of July, 1998.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–19470 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 211

[INS No. 1920–98]

RIN 1115–AE47

Waiver of Inadmissibility for Certain Applicants for Admission as Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes a technical correction to the Immigration and Naturalization Service (Service) regulations that govern the documentary requirements for immigrants and corresponding waivers. The regulations at 8 CFR 211.1(b)(3) permit District Directors, in individual cases, to waive the inadmissibility of aliens seeking admission for permanent residence or as returning residents who fail to present the appropriate travel documents. This rule will clarify that aliens granted waivers pursuant to 8 CFR 211.1(b)(3) are not exempt from the visa requirement, and that carriers remain liable for fines imposed under section 273(a) of the Act for bring these aliens to the United States, even if the District Director grants a waiver of inadmissibility to the alien at the time of admission into the United States as a returning resident. This change is necessary to conform the language of the regulations with the statutory authority which exists to impose a fine when an alien is transported to the United States without the proper documentation.

DATES: This rule is effective July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Una Brien, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, Virginia 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: Section 273 of the Immigration and Nationality Act (the Act) imposes a fine on any carrier who brings to the United States any alien who lacks the passport or visa required by law. Section 211(b) of the Act permits the Attorney General to waive the inadmissibility of aliens seeking admission as returning residents who lack the necessary travel documents. Under the jurisprudence developed by the Board of Immigration Appeals (BIA), whether granting a waiver of inadmissibility relieves the carrier of liability for a fine depends on how the regulation governing the exercise of this waiver authority is written. See *e.g., Matter of "Flight SR–4"*, 10 I&N Dec. 197 (BIA 1963). The BIA has treated regulations that provide for a "blanket" waiver as also relieving the carrier of fine liability. The carrier remains liable, however, if the regulations provide for waivers only in individual cases. *See Matter of Plane "CUT–604"*, 7 I&N Dec. 701, 702 (BIA 1958) citing *Matter of PAA Plane "Flight 204"*, 6 I&N Dec. 810 (BIA 1955).

On March 22, 1996, the Service published a final rule in the **Federal Register** at 61 FR 11717, which amended the regulations governing granting waivers of inadmissibility to nonimmigrants. The purpose of the amendment was to ensure that when the Service grants a waiver of inadmissibility, the carrier is not relieved from fine liability. On September 30, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,

Pub. L. 104–208, which required the Service to amend major portions of its regulations. On January 3, 1997, the Service published a proposed rule in the **Federal Register**, at 62 FR 444, and a subsequent interim rule on March 6, 1997, at 62 FR 10312, implementing the provisions of Pub. L. 104–208.

In addition, the proposed and interim rules also restructured major portions of 8 CFR, including part 211 to make it easier to understand. However, as contained in the proposed and interim rule, the exceptions to the visa documentary requirements referenced in Section 211.1(a) should have been limited to those circumstances listed in "paragraph (b)(1)" and not all of "paragraph (b)." The classes of aliens listed in section 211.1(b)(1), *e.g.*, a child born after the issuance of an immigrant visa to the child's accompanying parent or a child born during the temporary visit abroad of a mother who is a lawful permanent resident or a national of the United States, are identical to those specifically excepted from the visa documentary requirement prior to the restructuring of the regulation. See 8 CFR 211.1(a) (1997). The erroneous reference to "paragraph (b)" may mislead some readers into thinking that returning lawful permanent residents who apply for and are granted a waiver of the visa requirement on a case by case basis, *i.e.*, the class of aliens described in 8 CFR 211.1(b)(3), are exempt from presenting entry documents and, by extension, that a carrier which transports such as alien to the United States no longer incurs liability under section 273(b) of the Act. This ambiguity in the meaning of the interim rule was the result of an administrative oversight rather than a deliberate policy decision.

Accordingly, this final rule amends § 211.1(a) to revise the reference to "paragraph (b)" to read "paragraph (b)(1)". This is intended to clarify, once again, that a waiver of inadmissibility does not relieve the carrier of fine liability for carrying an alien passenger without the required documents.

Good Cause Exception

The amendment made by this rule corrects an inadvertent error which was included in a proposed rule published by the Service in the **Federal Register** on January 3, 1997, at 62 FR 444, and in the subsequent interim rule published in the **Federal Register** on March 6, 1997, at 62 FR 10312. As stated in the supplemental portion of the proposed rule, 62 FR 452, the Service was engaged in a comprehensive review of all of its regulations in an effort to reduce them and make them more readable and understandable. It was the Service's intention to restructure 8 CFR part 211 to make it easier to comprehend. It was never the Service's intention to undermine the Service's ability to impose fines for violations under section 273 of the Act. Although the Service intended to correct this technical error when a final rule was published, the Service believes that good cause exists to issue a separate final rule to amend § 211.1(a) to correct the error immediately. This rule has been published as a proposed and interim rule as part of a larger rule with opportunity for public comment, therefore, it is unnecessary to issue it now as a proposed rule.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner has reviewed this regulation, and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined by 5 U.S.C. 601(6). This rule merely removes any ambiguity between the current regulations and section 273 of the Act by correcting an inadvertent error in its regulations that is addressed in the supplemental portion of this final rule.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections (3)(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 211

Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 211 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

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

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

§ 211.1 [Amended]

2. In § 211.1 paragraph (a) introductory text is amended by revising the reference to "paragraph (b)" to read "paragraph (b)(1)".

Dated: May 26, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 615, 620 and 627

RIN 3052–AB58

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Title V Conservators and Receivers; Capital Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), adopts a final rule to amend its capital adequacy and related regulations to address: interest rate risk; the grounds for appointing a conservator or receiver; capital and bylaw requirements for service corporations; and various computational issues and other issues involving the capital regulations. The rule adds safety and soundness requirements deferred from prior rulemakings, provides greater consistency with capital requirements of other financial regulators, and makes technical corrections.

EFFECTIVE DATE: This regulation shall become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

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SUPPLEMENTARY INFORMATION:

I. General

The Agency proposed amendments to its capital regulations on September 23, 1997 (62 FR 49623). The purpose of the proposed regulations was to build on previous regulatory efforts by addressing discrete issues related to capital that were deferred during consideration of the capital adequacy regulations that became effective in March 1997. The issues addressed in the proposed rule were:

- Interest rate risk as it pertains to Farm Credit System (System or FCS) institutions;
- The definition of insolvency and of "an unsafe or unsound condition to transact business" for the purpose of appointing a conservator or receiver;
- The establishment of capital and bylaw requirements for System service corporations;
- Changes to risk-weighting categories of assets;
- The retirement of certain allocated equities included in core surplus;
- Deferred-tax assets;
- The treatment of intra-System investments for capital computation purposes;
- Various other computational issues; and
- Other technical issues.

As described more fully below, the FCA Board has made revisions to the proposed regulations on interest rate risk management programs, the enumerated circumstances in which the FCA could consider an institution to be in an unsafe or unsound condition for purposes of appointing a conservator or receiver, and the proposal regarding the treatment of "other comprehensive income" in calculating regulatory capital. The remaining regulations are adopted substantially as proposed.

Comments were received on the proposed regulations from the System's Presidents' Finance Committee, which reflected the views of the System's banks and associations (System joint comment); two Farm Credit banks; and a jointly managed production credit association (PCA) and Federal land credit association (FLCA). In addition, a third Farm Credit bank submitted a sample computation of the proposed rule's deferred-tax asset exclusion and asked the Agency to determine whether it had been calculated properly. The respondents did not comment generally on the overall thrust of the proposed rule; rather, their comments addressed specific issues as described below. All of the comments were carefully considered in the formulation of the final rule.

II. Interest Rate Risk

New §§ 615.5180 and 615.5181 are added to the investment regulations to require each System bank to establish an interest rate risk management program and to charge the bank's board of directors and senior management with responsibility for maintaining effective oversight. In addition, new § 615.5182 imposes the same requirements on all other System institutions [1] (excluding the Federal Agricultural Mortgage Corporation) [2] with interest rate risk exposure.

The language in § 615.5182 has been revised from the proposed rule to clarify that the board and management of each System institution have a duty to identify and manage interest rate risk exposure at their institution. The new regulation requires institutions other than banks to establish interest rate risk management programs for all interest rate risk, including risk that is being managed by the bank. The board of directors of an institution is accountable for all interest rate risk exposure of the institution regardless of whether the institution has contracted with the funding bank to manage certain interest rate risks. Although the funding bank may manage the interest rate risk, the institution's board is still accountable for ensuring that risk exposures are appropriately identified and managed. In those cases where an institution has interest rate risk exposure in excess of any exposure covered by the bank, the institution will also be expected to establish additional management requirements commensurate with the level of such exposure.

To supplement these new regulations, which are general in nature, the FCA Board recently adopted and published for comment a proposed interest rate risk management policy. *See* 63 FR 27962, May 21, 1998. The policy statement provides guidance to System institutions on prudent interest rate risk management principles, as well as the criteria the FCA will use to evaluate the adequacy and effectiveness of a System institution's interest rate risk management. The proposed guidelines are similar in approach to the interest rate risk guidelines issued by other Federal financial institution regulatory agencies.[3]

The new interest rate risk regulations and policy statement will improve FCA oversight of the System by supplementing existing capital regulations, which specifically address only credit risk. The regulations and policy statement will better inform System institutions of the Agency's expectations for the management of

[1] Section 1.2(a) of the Farm Credit Act of 1971, as amended, (Act) identifies System institutions as Farm Credit Banks, banks for cooperatives, production credit associations, Federal land bank associations, and "such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration." Such additional institutions would include agricultural credit banks, agricultural credit associations, Federal land credit associations, and service corporations chartered under section 4.25 of the Act. For purposes of the requirements of § 615.5182, the Federal Agricultural Mortgage Corporation is not included in the discussion of System institutions.

[2] Regulations affecting the Federal Agricultural Mortgage Corporation will be issued separately.

[3] The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board.

interest rate risk exposure. The potentially adverse effect that interest rate risk may have on net interest income and the market value of an institution's equity is of particular concern to the FCA. Unless properly measured and managed, interest rate changes can have significant adverse effects on System institutions' ability to generate future earnings, build net worth, and maintain liquidity. The combined effect of the final regulation and provisions of the policy statement is to ensure sound interest rate risk management by all System institutions.

With the publication for comment of the proposed interest rate risk management policy, the FCA has addressed the one comment it received on the proposed interest rate provisions. The System joint comment included a request that the Agency continue its practice of following the approaches taken by other Federal financial institution regulatory agencies and that the System be provided with an opportunity to comment on any proposed policy statement prior to final issuance.

III. Definition of Insolvency and "Unsafe or Unsound Condition to Transact Business"

The FCA Board adopts several changes to § 627.2710, which sets forth the grounds for appointing a conservator or receiver for a System institution. First, the definition of "insolvency" as a ground for appointing a conservator or receiver in paragraph (b)(1) is amended to clarify that any stock or allocated equities held by current or former borrowers are not "obligations to members." There is no change in the treatment of obligations to members such as investment bonds and uninsured accounts. Second, the Agency revises paragraph (b)(3), which currently provides that a conservator or receiver may be appointed if "[t]he institution is in an unsafe or unsound condition to transact business." The revision adds that "having insufficient capital or otherwise" is a circumstance that the FCA could consider to be an unsafe and unsound condition. The amendment also identifies capital and collateral thresholds below which an institution could be considered to be operating unsafely, as well as other conditions. The thresholds and conditions are:

1. For banks, a net collateral ratio (as defined by § 615.5301(d)) below 102 percent.

2. For associations, a default by the association of one or more terms of its general financing agreement (GFA) with its affiliated bank that the FCA determines to be material.

3. For all institutions, permanent capital (as defined in § 615.5201) of less than one-half the minimum required level for the institution.

4. For all institutions, a total surplus (as defined by § 615.5301(i)) ratio of less than 2 percent.

5. For associations, stock impairment.

The final rule contains a revision in item 2 above, which as proposed pertained to collateral that is insufficient to enable an association to meet the requirements of its GFA with its affiliated bank. The FCA Board changed the provision in response to the System's joint comment that the term "insufficient collateral" in the second threshold was too imprecise. The System joint comment stated that some GFAs might have a more "strident" collateral test that could result in a technical default that could be cured in a number of ways. The System joint comment recommended instead that a "continuing and material default under the terms of the association's [GFA]" be considered to be an unsafe and unsound condition to transact business; it stated that the materiality standard would eliminate minor matters, and the requirement that the default be continuing would eliminate defaults that could be cured. The jointly managed PCA/FLCA commented that it supported the revision proposed in the System joint comment.

The FCA Board agrees in part with the suggestion in the System joint comment. It is appropriate to provide that a material default of the GFA would be considered an unsafe and unsound condition for transacting business and, consequently, a ground for appointing a conservator or receiver. However, a provision that the default must be continuing is too restrictive, since a material default can indicate severe problems even when the default might be cured by, or is waived by action of the affiliated bank. The FCA Board further believes that the Agency, not the bank nor the association, should be responsible for determining, as a ground for appointing a conservator or receiver, what constitutes a material default of the GFA. Therefore, the final rule is revised by removing the reference to "insufficient collateral" in the proposed rule and providing instead that an unsafe or unsound condition for transacting business includes an association's default under the terms of its GFA, where such default is determined by the Agency to be material.

While no other comments were received on the remaining standards and conditions, the FCA Board has made some minor adjustments in the final rule for clarity and conformity.

As was noted in the preamble to the proposed regulations, the thresholds and conditions are intended to be examples of what the Agency considers to be an unsafe or unsound condition to transact business for the purpose of appointing a conservator or receiver but are not exclusive. The FCA will continue to have the discretion to determine if an institution is in an unsafe or unsound condition to transact business based on other activities or circumstances that are not enumerated in the regulation. The FCA also retains the discretion to not appoint a conservator or receiver even when any of the enumerated circumstances exists. The Agency will evaluate the totality of circumstances before deciding what action, if any, to take.

The Board notes further that the delineation of the "unsafe or unsound" thresholds in this regulation does not mean that an institution is conclusively presumed to be operating safely and soundly if it is above all of the enumerated thresholds. The FCA may still consider an institution operating below minimum capital standards to be operating unsafely and unsoundly, and take appropriate supervisory action accordingly.

IV. Service Corporations

A. Capital Requirements for Service Corporations

The FCA Board amends § 611.1135(c) to provide that minimum capital requirements may be imposed on a service corporation as a condition of approval of the service corporation's charter. The Agency will monitor a service corporation's compliance with individually established capital standards through the examination process. No comments were received on the proposed revision, and the FCA Board adopts the rule as proposed.

B. Application of Bylaw Regulations to Service Corporations

Section 615.5220 is amended by adding a new paragraph (b) requiring each service corporation to have relevant capitalization provisions in its bylaws. A conforming amendment to § 611.1135(b)(4) is also adopted. No comments were received on these provisions, and they are adopted as proposed.

V. Deferred-Tax Assets

The FCA amends § 615.5210 to add a new paragraph (e)(11) establishing a requirement to exclude certain deferred-

tax assets in capital calculations. Section 615.5201 is also amended to add new paragraph (d) to define deferred-tax assets that are dependent on future income or future events. These amendments are adopted without change from the proposal.

Under this rule, when an institution computes its required capital ratios, it is not required to exclude deferred-tax assets that can be realized through carrybacks to taxes paid on income earned in prior periods. However, the rule excludes a portion of the deferred-tax assets: (1) That an institution can realize only if it earns sufficient taxable income in the future; or (2) that are dependent on the occurrence of other future events for realization. The portion of deferred-tax assets that must be excluded is the greater of:

(1) The deferred-tax assets in excess of the amount that the institution expects to realize within 1 year of the most recent calendar quarter-end date, based on the institution's financial projections of taxable income and other events for that year; or

(2) The deferred-tax assets in excess of 10 percent of core surplus capital existing before the deduction of any disallowed tax assets.

An institution must deduct the excluded deferred-tax assets from capital and from assets when calculating capital ratios.

The Agency received one comment and a sample computation regarding its proposal. The System joint comment objected to the FCA's statement, in the preamble to the proposed regulation, that the proposed exclusion was consistent with requirements implemented by the other Federal financial institution regulatory agencies. The other agencies provide that commercial banks and thrifts must deduct deferred-tax assets in excess of 10 percent of their Tier 1 capital or in excess of the amount expected to be realized within 1 year (whichever is greater). The System joint comment asserted that the FCA's use of core surplus as the basis for the 10-percent limitation was not consistent with the other agencies' approach. Rather, the System contended, the 10-percent limitation in the calculation should be 10 percent of permanent capital, not core surplus, because permanent capital was "a conservative equivalent of Tier 1 capital" for commercial banks and thrifts.

The Agency disagrees with the characterization of permanent capital as a "conservative equivalent" of a commercial bank's Tier 1 capital. The components of Tier 1 capital are generally more stable than many components of permanent capital. It is true that common stockholders' equity, which is included in permanent capital but not core surplus, is a component of a commercial bank or thrift's Tier 1 capital. However, a commercial bank or thrift does not routinely retire its common stock. By contrast, most Farm Credit institutions routinely retire common stock and distribute allocated surplus. The Agency implemented a core surplus requirement to ensure that institutions have an amount of stable capital that is not generally subject to routine retirements or distributions for at least the next 3 years.[4] Furthermore, other components of permanent capital such as term stock are not included by commercial banks in Tier 1 capital and may be included in Tier 2 capital only up to an amount that equals the amount of the commercial bank's Tier 1 capital.[5] There are no such restrictions on a Farm Credit institution's permanent capital—nearly all capital is included without limit, except equity holdings between FCS institutions. Because of these significant functional differences, permanent capital and Tier 1 capital are not equivalent. The FCA Board continues to believe that core surplus is a more appropriate basis on which to limit the inclusion of deferred-tax assets and, therefore, adopts the regulation as proposed.

VI. Computational Issues

The FCA Board adopts technical corrections to the existing capital adequacy regulations, primarily involving the computation of the total surplus and core surplus capital requirements, as described below.

A. Average Daily Balance Requirement

The FCA Board adopts § 615.5330(c) to require computation of the total surplus, core surplus, and risk-adjusted asset base using average daily balances for the most recent 3 months, in the same way they are used for the calculation of permanent capital. Under the existing regulations, the total and core surplus ratios have been calculated using month-end balances. The change is made in response to requests from a number of institutions who commented that using month-end balances results in significant variability in the ratios due simply to seasonal lending trends.

One comment was received regarding proposed § 615.5330(c). The commenter supported the change on the ground that basing the calculations on point-in-time assets could lead to a distorted view of the capital position of an institution lending to agriculture due to its cyclical nature.

B. Maintenance of Core Surplus and Total Surplus Ratios

The FCA Board adopts several changes to its requirements that institutions maintain core surplus and total surplus ratios. Paragraphs (a) and (b) of § 615.5330 are amended to add the phrase "at all times" to the requirement that institutions must maintain core surplus and total surplus ratios of at least the minimum required level. The amendatory language clarifies that institutions must have the capability to calculate capital ratios every day, so that management decisions relative to loans in excess of the institution's loan limits, stock retirements, and other matters related to capital levels are made with knowledge of the institution's current capital ratios. For example, the institution must be able to calculate capital ratios on any date stock is retired, to ensure that minimum capital levels will be maintained after the retirement.

Section 615.5335 is also amended to expressly require banks to achieve and maintain at all times a net collateral ratio at or above the regulatory minimum, as well as to have the capability to calculate the net collateral ratio at any time using the balances outstanding at the computation date. No comments were received on these revisions, and they are adopted without change from the proposed rule.

C. Treatment of Intra-System Investments and Other Adjustments

1. Reciprocal Investments

The FCA amends § 615.5210(e)(1) to clarify the treatment of reciprocal holdings between two System institutions in the capital calculations. Institutions must eliminate reciprocal holdings before making the other required adjustments relating to intra-System investments. The Agency makes this clarification because some institutions have incorrectly made other required adjustments for intra-System investments before eliminating the reciprocal investments when calculating capital positions. The Agency intended that elimination of investments by one System institution in another institution be applied on a net basis after eliminating reciprocal holdings. *See* 53 FR 16956, May 12, 1988. This "netting

[4] Associations may include routinely distributed allocated equities in core surplus if such equities are not scheduled for retirement in the next 3 years.

[5] Consequently, a commercial bank or thrift that fails to meet its Tier 1 minimum standard will also fail to meet its overall (Tier 1 plus Tier 2) risk-based standard, no matter how much capital it may have that meets the definition of Tier 2 capital.

effect" ensures that System institutions eliminate cross-capital investments prior to other adjustments required by the capital regulations.

A System bank, which presently has investments in several of its affiliated associations, recommended that the Agency eliminate the reciprocal investment provisions from the regulations for the following reasons: (1) The FCA currently has prior approval authority over investments by Farm Credit banks in associations and could, therefore, control where the investment counts in the capital calculations; (2) the recently added capital ratios are more comprehensive and preclude the need for the reciprocal investment provisions; and (3) it is illogical for the bank to count its investment in the association in the bank's net collateral ratio, since the bank does not have access to the investment.

The FCA disagrees with the commenter's rationale for how reciprocal investments should be counted. Reciprocal investments must be eliminated from the capital calculations because the exchange of reciprocal stock creates no tangible worth or resources to absorb loss. This is a characteristic of all reciprocal investments, irrespective of the reasons why the reciprocal investment was made. It is not appropriate for any institution to be exempted from this treatment, as the commenter implies. Placing the requirement in the capital regulations ensures that all institutions calculate their capital in the same way, and that the Agency, investors, and others are then able to make meaningful comparisons of one institution's capital ratios with another institution's ratios. The approach suggested by the commenter would add unnecessary and inappropriate inconsistencies in the capital calculations of institutions.

The FCA Board also disagrees with the commenter's assertion that the newly added capital ratios make unnecessary the elimination of reciprocal investments in the permanent capital calculation. On the contrary, the new ratios have not diminished the importance of the permanent capital ratio as a reasonable indication of an institution's available permanent capital. The permanent capital ratio continues to be a key measurement in several important respects. An institution's lending limit is based on its level of permanent capital and specifies how large a loan or loans the institution can make to a single borrower. The institution is statutorily prohibited from retiring stock when its permanent capital is below the required minimum. Finally, with the adoption of this rule, if an institution's permanent capital falls below a level equal to one-half of the required minimum, a regulatory ground for appointing a conservator or receiver exists.

The commenter's assumption that a bank's investment in an association is included in the bank's net collateral is incorrect. Section 615.5301(c) of the regulations provides that net collateral is the value of a bank's collateral as defined by § 615.5050, less an amount equal to the bank's allocations to associations that are not counted as permanent capital by the bank. Section 615.5050 does not include a bank's investment in an association in bank collateral, but does include the following:

- Notes and other obligations representing loans made under the Act;
- Real or personal property acquired in connection with loans made under the Act;
- Obligations of the United States or an agency thereof;
- Other bank assets (including marketable securities) approved by the FCA; and
- Cash or cash equivalents.

The Agency notes that the commenter may have assumed that, because its investments in its associations were approved by the FCA pursuant to § 615.5171, they qualify for inclusion in collateral as "other bank assets . . . approved by the Farm Credit Administration." This is an incorrect interpretation of the collateral definition, which covers only bank assets that have been approved by the Agency specifically for inclusion as collateral. As is clear from the list of assets that may count as collateral, only highly liquid investments qualify. A bank's investment in an affiliated association is not liquid: there is no market for the stock, and—as the commenter points out—the bank does not have access to the investment. Consequently, it would be inappropriate to include the bank's investment in its associations in the net collateral.

2. Computation of Total and Core Surplus Ratios

The FCA Board clarifies the treatment of intra-System equity investments and other deductions in the computations of total and core surplus. For the calculation of total surplus, § 615.5301(i)(7) is amended to more clearly require the same deductions as those made in the computation of permanent capital. In addition, paragraphs (a)(2) and (a)(3) of § 615.5330, which specify how a bank and an association treat an association's investment in its bank in the calculation of total surplus, are eliminated because the treatment is now covered by revised § 615.5301(i)(7). No comments were received on the proposed amendments to the total surplus calculation, and they are adopted without change.

With respect to core surplus, § 615.5301(b)(4) is amended to require the deduction of most intra-System investments in the computation of the core surplus of both the investing and the issuing institutions. However, investments to capitalize loan participations are not deducted from the investing institution's core surplus. In the preamble to the proposed rule, the FCA invited comment on this approach and an alternative approach of eliminating intra-System investments relating to loan participations from the core surplus of the investing institution. No comments were received on this issue, and the FCA Board finds no reason to revise its earlier proposal; thus, the amendment is adopted as proposed.

The core surplus computation in existing § 615.5301(b)(3) is amended to require institutions to make adjustments for loss-sharing agreements and for deferred-tax assets, as well as for investments in the Farm Credit Services Leasing Corporation (Leasing Corporation) and for goodwill. No comments were received on this proposal, and the proposal is adopted without change.

3. Investments in Service Corporations

The FCA Board amends § 615.5210(e)(6) to require an institution to deduct its investments in service corporations from total capital for purposes of computing permanent capital. This is an expansion of the existing regulation, which requires an institution to deduct only its investment in the Leasing Corporation. The change conforms to the Agency's view that such capital investments are committed to support risks at the service corporation level and that such capital investments must be available to meet any capital needs of the service corporation. The investing institution must also deduct the investments when calculating its core and total surplus. The FCA received no comments on the proposed provision and adopts it with only minor technical changes.

D. Farm Credit System Financial Assistance Corporation (FAC) Obligations

The FCA amends 615.5210(a) to provide that Farm Credit institutions shall exclude FAC obligations from their balance sheets only if such obligations were issued to pay capital preservation

and loss-sharing agreements. This amendment conforms the regulation to the language of section 6.9(e)(3)(E) of the Act and narrows the existing regulation, which excludes all FAC obligations from institutions' balance sheets. The Agency received no comments on this provision and adopts it as proposed.

E. Risk-Weighting Categories and Credit Conversion Factors for Calculating Risk-Adjusted Assets

The FCA Board adopts modifications to the risk-weighting categories for on- and off-balance-sheet assets in § 615.5210(f) and adds related definitions in § 615.5201. The modifications provide a more accurate weighting of assets relative to their risk and incorporate recent changes to the Basle Accord,[6] as well as provide consistency with the requirements of the other Federal financial institution regulatory agencies. No comments were received on the proposed revisions, and the FCA Board adopts without change the following revisions:

- The elimination of the 10-percent category in § 615.5210(f)(2)(ii);
- The 20-percent risk-weighting category that includes conditional guarantees and Government-sponsored agency securities not backed by the full faith and credit of the U.S. Government;
- Language distinguishing the Organization for Economic Cooperation and Development (OECD)-based group of countries from non-OECD-based countries; and

Credit conversion factors for derivative transactions.

Additionally, in new § 615.5201(m)(2), which defines "qualifying bilateral netting contract," a definition of the term "walkaway clause" has been added.

The FCA Board also adopts an amendment to change the risk weighting for unused commitments with an original maturity of less than 14 months to zero percent. Under the existing regulation, the zero-percent category applies to loan commitments of up to only 12 months. One commenter supported the proposed change but recommended that unused loan commitments with an original maturity of 14 to 25 months be risk-weighted at 10 percent and that those of longer original maturity be risk-weighted at 20 percent; currently, any unused commitments in excess of 12 months are risk-weighted at 50 percent. The commenter stated that such changes would not be material in terms of risk and would allow Farm Credit institutions to offer more timely service at a lower cost to the institutions. The FCA agrees with the commenter that lowering the risk weighting of loans or other assets could potentially lower the costs of institutions that do not presently have capital well in excess of their minimum requirements. However, the Agency disagrees with the commenter's assertion that such changes would not be material in terms of risk. On the contrary, the changes would enable Farm Credit institutions to increase loan commitments by two to five times without a corresponding increase in the amount of capital required to be held. Thus, the final rule does not reduce the 50-percent risk weighting on loan commitments with an original maturity of greater than 14 months.

As stated in the preamble to the proposed regulations, the FCA intends to make the risk-weighting requirements of its regulations consistent with the requirements of the other Federal financial institution regulatory agencies, to the extent appropriate to the System. In this case, the FCA Board believes it is appropriate to extend the zero-percent risk-weighting category to loans with an original maturity of 14 months, even though this is a deviation from the 12-month zero-percent risk-weighting category of the other regulators. Farm Credit institutions are more directly affected by the seasonal cycles of agriculture than are most commercial banks and thrifts because of the System's agriculture-specific charter. Extending the zero-percent category by 2 months will not increase materially the risk in System institutions' portfolios. A 14-month category for zero-percent risk weighting takes into consideration the fact that many Farm Credit institutions make loans on an annual renewal cycle. The practice of these institutions is to perform the credit review and subsequent commitment 30 to 60 days prior to the end of the current loan commitment in order to have loan commitments in place at the beginning of each annual cycle. The revision adopted by the FCA Board will enable institutions to risk-weight these annual loan commitments at zero percent without substantially raising the associated risk.

The System's joint comment recommended that the FCA adopt, as final, a risk-weighting change proposed by the other Federal financial institution regulatory agencies in November 1997. The other agencies proposed to revise the risk-based capital treatment of recourse obligations, direct credit substitutes, and securitized transactions. One proposed revision of the other regulators would lower the risk weighting for AAA-rated asset-backed securities from 100 percent to 20 percent. The System asked in its joint comment that the Agency incorporate this change when it adopts these capital regulations in final form, asserting that it is unlikely that the amendment proposed by the other agencies will be challenged. FCA staff's discussions with the other regulators indicated no final decisions are imminent as to what the other agencies' final rule will address and when it will be adopted. The FCA Board believes that a change to FCA's current risk weighting of such assets is not appropriate at this time. However, the Agency will continue to monitor the efforts of the other regulatory agencies and evaluate the appropriateness of FCA's capital requirements should the other regulatory agencies implement a 20-percent risk weighting for AAA-rated asset-backed securities.

VII. Other Issues

A. Retirement of Certain Allocated Equities Included in Core Surplus

The FCA Board amends § 615.5301(b)(2) to generally disallow certain allocated equities from treatment as association core surplus in the event of partial retirements of similar equities allocated in the same year. However, the revised regulation allows certain allocated equities to remain a part of core surplus when: (1) Partial retirements are required by section 4.14B of the Act, (2) an equityholder has defaulted on a loan, or (3) an equityholder whose loan has been repaid has died, and the institution's capital plan provides for retirement in that circumstance.

Previously, the regulation did not specifically address partial retirements of the type of allocated equities that associations may include in core surplus pursuant to § 615.5301(b)(2). By this change, treatment of such allocated equities is consistent with the treatment in § 615.5301(b)(1)(ii) of nonqualified allocated equities not distributed according to a plan or practice. The Agency had intended to treat partial retirements of all allocated equities in the same way. The change makes the consistent treatment clear for all types of allocated equities. The Agency received no comments on this provision and adopts it as proposed.

[6] Agreed to by the Committee on Banking Regulations and Supervisory Practices, under the auspices of the Bank for International Settlements in Basle, Switzerland. Under this agreement the other Federal financial institution regulatory agencies that are signatories to the Accord are bound to consider such direction and revise their regulations accordingly. The FCA, for consistency purposes, also chooses to consider and revise its regulations, as appropriate to the System.

B. Ensuring Two Nominees for Each Bank Director's Position and Ensuring Representation on the Board of All Types of Agriculture in the District

Pursuant to section 4.15 of the Act, a new § 615.5230(b)(5) is added to require banks to make a good faith effort to locate at least two nominees for each director position and to try to assure representation on the board that is reflective of the bank's territory. The Agency proposed these changes to implement the statutory requirement to adopt regulations assuring a choice for bank director positions and board diversity. The regulation requires written documentation of the effort a bank makes in the event it is unable to find at least two nominees for each position. The bank must also keep a record of the type of agriculture engaged in by each director on its board. In addition, a reference is added in § 611.350, the subpart on director elections, to the cooperative principles set forth in § 615.5230 that apply to such elections.

One commenter asserted that the new regulations should not apply to situations where directors are nominated by shareholders rather than by a nominating committee. (The Act requires only associations to utilize a nominating committee, but other institutions may also choose to do so.) A Farm Credit bank submitted a comment in which it described its nominating process: the bank sends ballots to all eligible shareholders to solicit nominations for director positions, and the two individuals receiving the highest number of votes become the nominees. In the event that one of the nominees withdraws from the election, the bank asks the candidate with the third-highest number of votes to run, but the bank is sometimes unsuccessful. Consequently, only one candidate remains for the office.

The Agency is not persuaded by the Farm Credit bank's assertion that, because the bank uses a shareholder nomination process rather than a nominating committee, it should not have to document in writing its attempts to assure at least two nominees for each director position. Section 4.15 of the Act states in pertinent part that FCA regulations on the election of bank directors shall "assure a choice of two nominees for each elective office to be filled;" the Act makes no reference to nominating committees. Institutions must make good faith efforts to assure at least two candidates, but the Agency does not intend or expect the written documentation of these efforts to be burdensome. The bank needs merely to provide a brief but reasonable description of its efforts to seek a second nominee for inclusion in its records. This regulation does not require two nominees for each position. Instead, it requires documentation of the bank's efforts to secure at least two nominees. The FCA Board adopts the regulation without change from the proposal.

C. Statement of Financial Accounting Standards (SFAS) No. 130, Reporting Comprehensive Income

Sections 615.5210(e)(10), 615.5301(b)(5), and 615.5301(i)(4) are amended to extend the exclusion currently applicable to unrealized gains or losses on available-for-sale securities to all transactions covered by the definition of "accumulated other comprehensive income" contained in the Financial Accounting Standards Board's (FASB) recently issued SFAS No. 130, Reporting Comprehensive Income. SFAS No. 130 sets forth standards for reporting and displaying comprehensive income in a full set of financial statements for fiscal years beginning after December 15, 1997. Transactions covered by this new statement will be reported as a separate component of the equity (capital) section in the statement of financial position.

The amendments are adopted in response to a suggestion made in the System's joint comment. The Agency did not propose any changes to the regulations in the proposed rule, on the ground that it saw no compelling reasons to limit the impact of SFAS No. 130. But in the preamble to the proposed rule, the FCA Board invited comment on what effect, if any, SFAS No. 130 should have on the current capital standards.

The System, in its joint comment, recommended that the Agency amend the capital regulations to extend the exclusion currently applicable to unrealized gains or losses on available-for-sale securities to all transactions defined by SFAS No. 130 as "accumulated other comprehensive income." The commenter pointed out that the current capital regulations at § 615.5210(e)(10) exclude the net impact of unrealized gains or losses on available-for-sale securities from the computation of permanent capital. The commenter observed that the items included in the category of "other comprehensive income" pursuant to SFAS No. 130 are similar in nature to such unrealized gains or losses and that it would be appropriate to treat them in the same way.

The FCA Board is persuaded by the System's joint comment and adopts the System's suggested change. The Agency agrees that it is generally more appropriate to treat components of capital with comparable characteristics and terms in a like manner under the capital standards. However, in the event that the FCA determines that an individual component, entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, §§ 615.5301(b)(6) and 615.5301(f)(6) of the current regulations provide the Agency with sufficient flexibility to require the deduction of all or a portion of such a component, entry, or account from core surplus or total surplus.

D. Conforming Amendments

The FCA Board adopts several other clarifying changes to wording of the total surplus and core surplus definitions. Paragraphs (b)(1)(ii) and (iii), (b)(2), and (i)(2) and (3) of § 615.5301 are amended to provide additional clarity to the definitions. Paragraph (b)(1)(ii) is amended to clarify that the term "allocated equities" includes allocated stock. The FCA is concerned that some institutions may otherwise interpret the regulation as permitting institutions to treat allocated stock either as allocated equities (as described in paragraphs (b)(1)(ii) and (b)(2)) or as perpetual stock (as described in paragraphs (b)(1)(iii) and (i)(3)) when calculating core and total surplus. In fact, the allocated stock must be treated as allocated equities in the calculations. The FCA is also changing § 615.5301(b)(2) to clarify that, for purposes of the capital ratio calculations, "revolvement" of allocated equities means any retirement of those equities, whether or not the institution has a formal revolvement plan. This change is made to avoid the implication that revolvement means something other than retirement.

Furthermore, in § 615.5301(b)(2)(ii), the phrase "if subject to revolvement, are not scheduled for revolvement during the next 3 years" is replaced with the phrase "if subject to a plan or practice of revolvement or retirement, are not scheduled or intended to be revolved or retired during the next 3 years" in order to parallel more closely the language in paragraphs (b)(1)(ii) and (iii) of § 615.5301. A parallel change is made to § 615.5301(i)(2) by replacing the phrase " which, if subject to revolvement of retirement, have an original planned revolvement or retirement date of not less than 5 years" with the phrase "that are not subject to a plan or practice of revolvement or retirement of 5 years or less." These changes clarify that "subject to

revolvement" has the same meaning as the other references to a plan or practice of revolvement or retirement in the core surplus and total surplus definitions.

The Agency amends § 620.5 to require institutions to disclose information on their surplus and collateral ratios in the annual report to shareholders. Conforming, nonsubstantive changes are also adopted in § 615.5201(h) to replace "allocation" with "allotment" and in §§ 615.5210(b) and 615.5260(a)(3)(ii) to remove obsolete language. These amendments are adopted without change from the proposed rule.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

For the reasons stated in the preamble, parts 611, 615, 620, and 627 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart C—Election of Directors

2. Section 611.350 is added to read as follows:

§ 611.350 Application of cooperative principles to the election of directors.

In the election of directors, each System institution shall comply with the applicable cooperative principles set forth in § 615.5230 of this chapter.

Subpart I—Service Organizations

3. Section 611.1135 is amended by revising paragraphs (b)(4) and (c) to read as follows:

§ 611.1135 Incorporation of service organizations.

* * * * *

(b) * * *

(4) The proposed bylaws, which shall include the provisions required by § 615.5220(b) of this chapter.

* * * * *

(c) *Approval.* The Farm Credit Administration may condition the issuance of a charter, including imposing minimum capital requirements, as it deems appropriate. For good cause, the Farm Credit Administration may deny the application. Upon approval by the Farm Credit Administration of a completed application, which shall be kept on file at the Farm Credit Administration, the Agency shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

4. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

5. Section 615.5135 is amended by removing the first sentence of the introductory paragraph and adding two sentences in its place to read as follows:

§ 615.5135 Management of interest rate risk.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall develop and implement an interest rate risk management program as set forth in subpart G of this part. The board of directors shall adopt an interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. * * *

* * * * *

6. A new subpart G is added to read as follows:

Subpart G—Risk Assessment and Management

Sec.

Subpart G—Risk Assessment and Management

§ 615.5180 Interest rate risk management by banks—general.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall develop and implement an interest rate risk management program tailored to the needs of the institution and consistent with the requirements set forth in § 615.5135 of this part. The program shall establish a risk management process that effectively identifies, measures, monitors, and controls interest rate risk.

§ 615.5181 Bank interest rate risk management program.

(a) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is responsible for providing effective oversight to the interest rate risk management program and must be knowledgeable of the nature and level of interest rate risk taken by the institution.

(b) Senior management is responsible for ensuring that interest rate risk is properly managed on both a long-range and a day-to-day basis.

§ 615.5182 Interest rate risk management by associations and other Farm Credit System institutions other than banks.

Any association or other Farm Credit System institution other than banks, excluding the Federal Agricultural Mortgage Corporation, with interest rate risk that could lead to significant declines in net income or in the market value of capital shall comply with the requirements of §§ 615.5180 and 615.5181. The interest rate risk management program required under § 615.5181 shall be commensurate with the level of interest rate risk of the institution.

Subpart H—Capital Adequacy

§ 615.5201 [Amended]

7. Section 615.5201 is amended by removing the word "allocation" and adding in its place, the word "allotment" in paragraph (h); redesignating paragraphs (d), (e), (f), (g),

(h), (i), (j), (k), (l), (m), and (n) as paragraphs (e), (f), (g), (h), (i), (k), (l), (n), (o), (p), and (q) respectively; and adding new paragraphs (d), (j), and (m) to read as follows:

§ 615.5201 Definitions.

* * * * *

(d) *Deferred-tax assets that are dependent on future income or future events* means:

(1) Deferred-tax assets arising from deductible temporary differences dependent upon future income that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse;

(2) Deferred-tax assets dependent upon future income arising from operating loss and tax carryforwards; or

(3) Deferred-tax assets arising from temporary differences that could be recovered if existing temporary differences that are dependent upon other future events (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse.

* * * * *

(j) *OECD* means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years.

* * * * *

(m) *Qualifying bilateral netting contract* means a bilateral netting contract that meets at least the following conditions:

(1) The contract is in writing;

(2) The contract is not subject to a walkaway clause, defined as a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract;

(3) The contract creates a single obligation either to pay or to receive the net amount of the sum of positive and negative mark-to-market values for all derivative contracts subject to the qualifying bilateral netting contract;

(4) The institution receives a legal opinion that represents, to a high degree of certainty, that in the event of legal challenge the relevant court and administrative authorities would find the institution's exposure to be the net amount;

(5) The institution establishes a procedure to monitor relevant law and to ensure that the contracts continue to satisfy the requirements of this section; and

(6) The institution maintains in its files adequate documentation to support the netting of a derivatives contract.

* * * * *

8. Section 615.5210 is amended by adding new paragraph (e)(11); removing paragraph (f)(2)(v); and revising paragraphs (a), (b), (e) introductory text, (e)(1), (e)(6), (e)(10), (f)(2)(i), (f)(2)(ii), heading of (f)(2)(iii), (f)(2)(iv), (f)(3)(ii)(A), and (f)(3)(iii) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation issued to repay banks in connection with the capital preservation and loss-sharing agreements described in section 6.9(e)(1) of the Act shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) The institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.

* * * * *

(e) For the purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution shall deduct from its total capital and its assets an amount equal to the smaller investment. The elimination of reciprocal holdings required by this paragraph shall be made prior to making the other adjustments required by this section.

* * * * *

(6) The double-counting of capital by a service corporation chartered under section 4.25 of the Act and its stockholder institutions shall be eliminated by deducting an amount equal to the institution's investment in the service corporation from its total capital.

* * * * *

(10) The permanent capital of an institution shall exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(11) For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions, limitations, and restrictions described in this paragraph.

(i) Each institution shall deduct an amount of deferred-tax assets, net of any valuation allowance, from its assets and its total capital that is equal to the greater of:

(A) The amount of deferred-tax assets that are dependent on future income or future events in excess of the amount that is reasonably expected to be realized within 1 year of the most recent calendar quarter-end date, based on financial projections for that year, or

(B) The amount of deferred-tax assets that are dependent on future income or future events in excess of ten (10) percent of the amount of core surplus that exists before the deduction of any deferred-tax assets.

(ii) For purposes of this calculation:

(A) The amount of deferred-tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences shall not be deducted from assets and from equity capital.

(B) All existing temporary differences should be assumed to fully reverse at the calculation date.

(C) Projected future taxable income should not include net operating loss carryforwards to be used within 1 year or the amount of existing temporary differences expected to reverse within that year.

(D) Financial projections shall include the estimated effect of tax-planning strategies that are expected to be implemented to minimize tax liabilities and realize tax benefits. Financial projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim date within the fiscal year.

(E) The deferred tax effects of any unrealized holding gains and losses on

available-for-sale debt securities may be excluded from the determination of the amount of deferred-tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred-tax effects are excluded, this treatment must be followed consistently over time.

(f) * * *

(2) * * *

(i) *Category 1: 0 Percent.*

(A) Cash on hand and demand balances held in domestic or foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill.

(D) Direct claims on and portions of claims unconditionally guaranteed by the United States Treasury, United States Government agencies, or central governments in other OECD countries. A United States Government agency is defined as an instrumentality of the United States Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

(ii) *Category 2: 20 Percent.*

(A) Portions of loans and other assets collateralized by United States Government-sponsored agency securities. A United States Government-sponsored agency is defined as an agency originally chartered or established to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

(B) Portions of loans and other assets conditionally guaranteed by the United States Government or its agencies.

(C) Portions of loans and other assets collateralized by securities issued or guaranteed (fully or partially) by the United States Government or its agencies (but only to the extent guaranteed).

(D) Claims on domestic banks (exclusive of demand balances).

(E) Claims on, or guarantees by, OECD banks.

(F) Claims on non-OECD banks with a remaining maturity of 1 year or less.

(G) Investments in State and local government obligations backed by the "full faith and credit of State or local government." Other claims (including loans) and portions of claims guaranteed by the full faith and credit of a State government (but only to the extent guaranteed).

(H) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(I) Loans and other obligations of and investments in Farm Credit institutions.

(J) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(K) Cash items in the process of collection.

(iii) *Category 3: 50 Percent.*

* * * * *

(iv) *Category 4: 100 Percent.*

(A) All other claims on private obligors.

(B) Claims on non-OECD banks with a remaining maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in Category 2(J).

(3) * * *

(ii) * * *

(A) *0 Percent.*

(*1*) Unused commitments with an original maturity of 14 months or less; or

(*2*) Unused commitments with an original maturity of greater than 14 months if:

* * * * *

(iii) *Credit equivalents of interest rate contracts and foreign contracts.*

(A) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

CONVERSION FACTOR MATRIX

[In Percent]

Remaining maturity	Interest rate	Exchange rate	Commodity
1 year or less	0.0	1.0	10.0
Over 1 to 5 years	0.5	5.0	12.0
Over 5 years	1.5	7.5	15.0

(B) For any derivative contract that does not fall within one of the categories in the above table, the potential future credit exposure shall be calculated using the commodity conversion factors. The net current exposure for multiple derivative contracts with a single counterparty and subject to a qualifying bilateral netting contract shall be the net sum of all positive and negative mark-to-market values for each derivative contract. The positive sum of the net current exposure shall be added to the adjusted potential future credit exposure for the same multiple contracts with a single counterparty. The adjusted potential future credit exposure shall be computed as

$A_{net} = (0.4 \times A_{gross}) + 0.6\ (NGR \times A_{gross})$

where:

(*1*) A_{net} is the adjusted potential future credit exposure;

(*2*) A_{gross} is the sum of potential future credit exposures determined by multiplying the notional principal amount by the appropriate credit conversion factor; and

(*3*) NGR is the ratio of the net current credit exposure divided by the gross current credit exposure determined as the sum of only the positive mark-to-markets for each derivative contract with the single counterparty.

* * * * *

Subpart I—Issuance of Equities

9. Section 615.5220 is amended by redesignating paragraphs (a) through (h) as paragraphs (1) through (8) consecutively; by adding the paragraph designation "(a)" to the introductory text; and by adding a new paragraph (b) to read as follows:

§ 615.5220 Capitalization bylaws.

* * * * *

(b) The board of directors of each service corporation (including the Farm Credit Leasing Services Corporation) shall adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth the

requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section to the extent applicable. Such bylaws shall also set forth the manner in which equities will be retired and the manner in which earnings will be distributed.

10. Section 615.5230 is amended by adding a new paragraph (b)(5) to read as follows:

§ 615.5230 Implementation of cooperative principles.

* * * * *

(b) * * *

(5) Each bank shall endeavor to assure that there is a choice of at least two nominees for each elective office to be filled and that the board represents as nearly as possible all types of agriculture in the district. If fewer than two nominees for each position are named, the efforts of the bank to locate two willing nominees shall be documented in the records of the bank. The bank shall also maintain a list of the type or types of agriculture engaged in by each director on its board.

Subpart J—Retirement of Equities

11. Section 615.5260 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 615.5260 Retirement of eligible borrower stock.

(a) * * *

(3) * * *

(ii) In the case of participation certificates and other equities, face or equivalent value; or

* * * * *

Subpart K—Surplus and Collateral Requirements

12. Section 615.5301 is amended by revising paragraphs (a), (b)(1)(ii), (b)(1)(iii), (b)(2)(ii), (b)(3), (b)(4), (b)(5), (i)(2), (i)(3), (i)(4), and (i)(7) to read as follows:

§ 615.5301 Definitions.

* * * * *

(a) The terms *deferred-tax assets that are dependent on future income or future events, institution, permanent capital,* and *total capital* shall have the meanings set forth in § 615.5201.

(b) * * *

(1) * * *

(ii) Nonqualified allocated equities (including stock) that are not distributed according to an established plan or practice, *provided that,* in the event that a nonqualified patronage allocation is distributed, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining nonqualified allocations that were allocated in the same year will be excluded from core surplus.

(iii) Perpetual common or noncumulative perpetual preferred stock (other than allocated stock) that is not retired according to an established plan or practice, *provided that,* in the event that stock held by a borrower is retired, other than as required by section 4.14B of the Act or in connection with a loan default to the extent provided for in the institution's capital plan, the remaining perpetual stock of the same class or series shall be excluded from core surplus;

* * * * *

(2) * * *

(ii) The allocated equities, if subject to a plan or practice of revolvement or retirement, are not scheduled or intended to be revolved or retired during the next 3 years, provided that, in the event that such allocated equities included in core surplus are retired, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining such allocated equities that were allocated in the same year will be excluded from core surplus.

(3) The deductions required to be made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) (6), (7), (9), and (11) shall also be made in the computation of its core surplus. Deductions required by § 615.5210(e)(1) shall also be made to the extent that they do not duplicate deductions calculated pursuant to this section and required by § 615.5330(b)(2).

(4) Equities issued by System institutions and held by other System institutions shall not be included in the core surplus of the issuing institution or of the holder, unless approved pursuant to paragraph (b)(1)(iv) of this section, except that equities held in connection with a loan participation shall not be excluded by the holder. This paragraph shall not apply to investments by an association in its affiliated bank, which are governed by § 615.5301(b)(1)(i).

(5) The core surplus of an institution shall exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

* * * * *

(i) * * *

(2) Allocated equities, including allocated surplus and stock, that are not subject to a plan or practice of revolvement or retirement of 5 years or less and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(3) Stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has no established plan or practice of retiring such perpetual stock or of retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument.

(4) The total surplus of an institution shall exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

* * * * *

(7) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) shall also be made in the computation of its total surplus.

13. Section 615.5330 is revised to read as follows:

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus.* (1) Each institution shall achieve and at all times maintain a ratio of a least 7 percent of total surplus to the risk-adjusted asset base.

(2) The risk-adjusted asset base is the total dollar amount of the institution's assets adjusted in accordance with § 615.5301(i)(7) and weighted on the basis of risk in accordance with § 615.5210(f).

(b) *Core surplus.* (1) Each institution shall achieve and at all times maintain a ratio of core surplus to the risk-adjusted asset base of a least 3.5 percent, of which no more than 2 percentage points may consist of allocated equities otherwise includible pursuant to § 615.5301(b).

(2) Each association shall compute its core surplus ratio by deducting an amount equal to the net investment in the bank from its core surplus.

(3) The risk-adjusted asset base is the total dollar amount of the institution's

assets adjusted in accordance with §§ 615.5301(b)(3) and 615.5330(b)(2), and weighted on the basis of risk in accordance with § 615.5210(f).

(c) An institution shall compute its risk-adjusted asset base, total surplus, and core surplus ratios using average daily balances for the most recent 3 months.

14. Section 615.5335 is revised to read as follows:

§ 615.5335 Bank net collateral ratio.

(a) Each bank shall achieve and at all times maintain a net collateral ratio of at least 103 percent.

(b) At a minimum, a bank shall compute its net collateral ratio as of the end of each month. A bank shall have the capability to compute its net collateral ratio a day after the close of a business day using the daily balances outstanding for assets and liabilities for that date.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

15. Section 615.5350 is amended by adding a new paragraph (b)(7) to read as follows:

§ 615.5350 General—Applicability.

* * * * *

(b) * * *

(7) An institution with significant exposures to declines in net income or in the market value of its capital due to a change in interest rates and/or the exercising of embedded or explicit options.

Subpart M—Issuance of a Capital Directive

16. Section 615.5355 is amended by revising paragraph (a)(4) to read as follows:

§ 615.5355 Purpose and scope.

(a) * * *

(4) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios, or reduce levels of interest rate and other risk exposures, or strengthen management expertise, or improve management information and measurement systems; or

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

17. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

§ 620.1 [Amended]

18. Section 620.1 is amended by removing the reference "§ 615.5201(j)" and adding in its place, the reference "§ 615.5201(l)" in paragraph (j).

Subpart B—Annual Report to Shareholders

§ 620.5 [Amended]

19. Section 620.5 is amended by removing the word "permanent" from paragraphs (d)(2), (g)(4)(v), and (g)(4)(vi); by revising paragraph (f)(3); and by adding paragraph (f)(4) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(f) * * *

(3) *For all banks* (on a bank-only basis):

(i) Permanent capital ratio.

(ii) Total surplus ratio.

(iii) Core surplus ratio.

(iv) Net collateral ratio.

(4) *For all associations:*

(i) Permanent capital ratio.

(ii) Total surplus ratio.

(iii) Core surplus ratio.

* * * * *

PART 627—TITLE V CONSERVATORS AND RECEIVERS

20. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7).

Subpart A—General

21. Section 627.2710 is amended by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 627.2710 Grounds for appointment of conservators and receivers.

* * * * *

(b) * * *

(1) The institution is insolvent, in that the assets of the institution are less than its obligations to creditors and others, including its members. For purposes of determining insolvency, "obligations to members" shall not include stock or allocated equities held by current or former borrowers.

* * * * *

(3) The institution is in an unsafe or unsound condition to transact business, including having insufficient capital or otherwise. For purposes of this regulation, "unsafe or unsound condition" shall include, but shall not be limited to, the following conditions:

(i) For banks, a net collateral ratio below 102 percent.

(ii) For associations, a default by the association of one or more terms of its general financing agreement with its affiliated bank that the Farm Credit Administration determines to be a material default.

(iii) For all institutions, permanent capital of less than one-half the minimum required level for the institution.

(iv) For all institutions, a total surplus ratio of less than 2 percent.

(v) For associations, stock impairment.

* * * * *

Dated: July 15, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–19394 Filed 7–21–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–31–AD; Amendment 39–10671; AD 98–15–20]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–500M gliders. This AD requires inspecting the center of gravity (C.G.) tow release cable pulley for correct positioning, and replacing the C.G. tow release cable pulley with one made of aluminum either immediately or eventually depending on the results of the inspection. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the C.G. tow release cable from coming off the pulley because of incorrect positioning, which could result in the pilot being unable to release from tow operations.

DATES: Effective September 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 9, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–31–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Glaser-Dirks Model DG–500M gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 27, 1998 (63 FR 20545). The NPRM proposed to require inspecting the C.G. tow release cable pulley for correct positioning, and replacing the C.G. tow release cable pulley with one made of aluminum, part no. S 30, either immediately or eventually depending on the results of the inspection. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Glaser-Dirks Technical Note No. 843–9, dated November 21, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the C.G. tow release cable coming off the pulley would only be an unsafe condition during flight and would only occur after repeated glider operation, the FAA has no basis to determine the approximate number of hours time-in-service (TIS) when the unsafe condition is likely to occur. For example, the unsafe condition referenced in this AD could occur on a glider with 10 hours TIS, but not occur until 500 hours TIS on another glider. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 5 gliders in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $20 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $700, or $140 per glider.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–15–20 Glaser-Dirks Flugzeugbau GmbH: Amendment 39–10671; Docket No. 98–CE–31–AD.

Applicability: Model DG–500M gliders, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the center of gravity (C.G.) tow release cable from coming off the pulley because of incorrect positioning, which could result in the pilot being unable to release from tow operations, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, inspect the C.G. tow release cable pulley for correct positioning in accordance with the Instructions section of Glaser-Dirks Technical Note No. 843–9, dated November 21, 1997. If any tow release pulley is found out-of-center during this inspection, prior to further flight, replace the C.G. tow release cable pulley with one made of aluminum, part no. S 30. Accomplish this replacement in accordance with the technical note.

(b) Within the next 6 calendar months after the effective date of this AD, unless already accomplished as required by paragraph (a) of this AD, replace the C.G. tow release cable pulley with one made of aluminum, part no.

S 30. Accomplish this replacement in accordance with the Instructions section of Glaser-Dirks Technical Note No. 843–9, dated November 21, 1997.

(c) The replacement required by paragraph (b) of this AD may be accomplished at any time prior to the required time, including in lieu of the inspection required by paragraph (a) of this AD.

(d) 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 glider to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Small Airplane Directorate.

(f) Questions or technical information related to Glaser-Dirks Technical Note No. 843–9, dated November 21, 1997, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspection and replacement required by this AD shall be done in accordance with Glaser-Dirks Technical Note No. 843–9, dated November 21, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–023, dated January 15, 1998.

(h) This amendment becomes effective on September 9, 1998.

Issued in Kansas City, Missouri, on July 14, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19333 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–27–AD; Amendment 39–10670; AD 98–15–19]

RIN 2120–AA64

Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Model AMT–200 Powered Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Model AMT–200 powered gliders. This AD requires replacing certain flexible hoses in the engine oil system with flexible hoses with a larger internal diameter. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Brazil. The actions specified by this AD are intended to prevent inefficiency of the engine lubricating system because of ineffective flexible hoses, which could result in an in-flight engine shutdown with consequent loss of powered glider controllability.

DATES: Effective September 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–27–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6083; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Aeromot Model AMT–200 powered gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 30, 1998 (63 FR 23685). The NPRM proposed to require replacing any engine oil system hose, part number 10702, 10703, or 10704, with a hose with a larger internal diameter, part number 10706, 10707, or 10708. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Brazil.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 18 powered gliders in the U.S. registry will be affected by this AD, that it will take approximately 7 workhours per powered glider to accomplish the replacements, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $7,560, or $420 per powered glider.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–15–19 Aeromot-Industria Mecanico Metalurgica Ltda.: Amendment 39–10670; Docket No. 98–CE–27–AD.

Applicability: Model AMT–200 powered gliders, serial numbers 200.046 through 200.066, certificated in any category.

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

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent inefficiency of the engine lubricating system because of ineffective flexible hoses, which could result in an in-flight engine shutdown with consequent loss of powered glider controllability, accomplish the following:

(a) *For powered gliders with a serial number in the range of 200.046 through 200.058:* Replace any engine oil system hose, part number 10702, with a hose with a larger internal diameter, part number 10706. Accomplish the replacement in accordance with Part I of the Accomplishment Instructions of Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997.

(b) *For powered gliders with a serial number in the range of 200.059 through 200.066:* Replace any engine oil system hose, part number 10702, 10703, or 10704, with a hose with a larger diameter, part number 10706, 10707, or 10708. Accomplish the replacement in accordance with Part II of the Accomplishment Instructions of Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 20349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(e) Questions or technical information related to Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997, should be directed to Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industrias-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacement required by this AD shall be done in accordance with Aeromot Service Bulletin B.S. No. 200–79–036, Issue Date: January 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian AD 97–04–02, dated April 8, 1997.

(g) This amendment becomes effective on September 7, 1998.

Issued in Kansas City, Missouri, on July 14, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19329 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–331–AD; Amendment 39–10538; AD 98–11–11]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 98–11–11 that was published in the **Federal Register** on May 26, 1998 (63 FR 28482). The typographical error resulted in an incorrect citation of a referenced service bulletin. This AD is applicable to all CASA Model CN–235 series airplanes, and requires modification of the passenger and crew doors and repetitive visual inspections, adjustments, and tests of the passenger and crew door latching and locking systems to ensure correct operation.

DATES: Effective June 30, 1998.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of June 30, 1998 (63 FR 28482, May 26, 1998).

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 98–11–11, amendment 39–10538, applicable to all CASA Model CN–235 series airplanes, was published in the **Federal Register** on May 26, 1998 (63 FR 28482). That AD requires modification of the

passenger and crew doors and repetitive visual inspections, adjustments, and tests of the passenger and crew door latching and locking systems to ensure correct operation.

As published, AD 98–11–11 contained typographical errors in paragraph (a)(2)(ii), which indicated that the actions required by that paragraph were to be accomplished in accordance with "paragraphs 2. and 3. of CASA COM 235–093, Revision 02, dated October 19, 1995; and paragraph V of Annex II of CASA COM 235–098, Revision 02, dated October 19, 1995." However, the correct service information reference is CASA COM 235–098, rather than CASA COM 235–093. In addition, the paragraph reference for Annex II should read: "paragraph V." (In all other parts of the published AD and its preamble, the service information was cited correctly.)

This document corrects the reference to the CASA service information cited in paragraph (a)(2)(ii) of AD 98–11–11.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains June 30, 1998.

In final rule, FR Doc. 98–13395, published on May 26, 1998 (63 FR 28482), make the following corrections:

§ 39.13 [Corrected]

1. On page 28483, in the third column, paragraph (a)(2)(ii) of AD 98–11–11 is corrected to read as follows:

* * * * *

(a) * * *

(2) * * *

(ii) Repeat adjustments and tests of the door latching and locking systems, in accordance with paragraphs 2. and 3. of CASA COM 235–098, Revision 02, dated October 19, 1995; and paragraph V of Annex II of CASA COM 235–098, Revision 02, dated October 19, 1995; at intervals not to exceed 1,200 flight hours. If any discrepancy is found during any adjustment or test, prior to further flight, accomplish the applicable corrective action in accordance with the COM.

* * * * *

Issued in Renton, Washington, on July 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19456 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–42]

Revision of Class E Airspace; Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the description of the Dallas-Forth Worth (DFW) Class E airspace area by changing its point of origin from the DFW Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the VORTAC's present geographical coordinates. The FAA is taking this action due to the planned relocation of the DFW VORTAC ¾ nautical miles west of its present location. The intent of this action is to facilitate the relocation of the DFW VORTAC without changing the actual dimensions, configuration, or operating requirements of the DFW Class E airspace area.

DATES: Effective: 0901 UTC, October 8, 1998.

Comment Date: Comments must be received on or before August 21, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–42, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays, An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division. Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–322–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the location of the Class E airspace area at Dallas-Forth Worth, TX. This action revises the description of the DFW Class E airspace area by changing its point of origin from the DFW VORTAC to the VORTAC's present geographical coordinates. The FAA is taking this action due to the planned relocation of the DFW VORTAC ¾ nautical miles west of its present location. The intent of this action is to facilitate the relocation of the DFW VORTAC without changing the actual dimensions, configuration, or operating requirements of the DFW Class E airspace area.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A Substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the

effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. 98–ASW–42." The postcard will be date stamped and returned to the commenter.

Agency Findings

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 level 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71. 1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

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

* * * * *

ASW TX E5 Dallas-Fort Worth, TX [Revised]

Dallas/Fort Worth International Airport, TX
(lat. 32°53'45"N., long. 97°02'14"W.)
McKinney Municipal, TX
(lat. 33°10'41"N., long. 96°35'26"W.)
Rockwall Municipal Airport, TX
(lat. 32°55'50"N., long. 96°26'08"W.)
Mesquite Metro Airport, TX
(lat. 32°44'49"N., long. 96°31'50"W.)
Mesquite NDB
(lat. 32°48'34"N., long. 96°31'45"W.)
Mesquite Metro ILS Localizer
(lat. 32°44'03"N., long. 96°31'50"W.)
Lancaster Airport, TX
(lat. 32°34'45"N., long. 96°43'09"W.)
Lancaster NDB
(lat. 32°34'40"N., long. 96°43'19"W.)
Point of Origin
(lat. 32°51'57"N., long. 97°01'41"W.)
Fort Worth Spinks Airport, TX
(lat. 32°33'55"N., long. 97°18'29"W.)
Celburne Municipal Airport, TX
(lat. 32°21'14"N., long. 97°26'02"W.)
Bourland Field, TX
(lat. 32°34'51"N., long. 97°35'29"W.)
Granbury Municipal Airport, TX
(lat. 32°26'40"N., long. 97°49'01"W.)
Weatherford, Parker County Airport, TX
(lat. 32°44'47"N., long. 97°40'57"W.)
Bridgeport Municipal Airport, TX
(lat. 33°10'29"N., long. 97°49'42"W.)
Decatur Municipal Airport, TX
(lat. 33°15'17"N., long. 97°34'50"W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort International Airport and within a 6.6-mile radius of McKinney Municipal Airport and within 1.8 miles each side of the 002° bearing from the McKinney Municipal Airport extending from the 6.6-mile radius to 9.2 miles north of the airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles each side of the 010° bearing from the airport extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Mesquite Metro Airport and within 8 miles each and 4 miles west of the 001° bearing from the Mesquite NDB extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Mesquite Metro ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster NDB extending from the 6.50-mile radius to 16 miles southeast of the NDB and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30 mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the Point of Origin and within 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles each and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 292° bering from the airport extending from the 6.9-mile radius to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 177° bearing from the airport extending from the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 040° bearing from the airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 263° bearing from the airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on July 14, 1998.

* * * * *

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–19421 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–23]

RIN 2120–AA66

Alteration of VOR Federal Airways; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies two Federal airways, V–165 and V–287, located in the State of Washington (WA), due to the newly commissioned Penn Cove Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aid. Federal Airway V–165 is modified to provide a route from the Olympia Very High Frequency Omnidirectional Range/Tactical Air Navigation System (VORTAC) to Penn Cove VOR to Bellingham, WA. Federal Airway V–287 is modified to provide a route from the Paine VORTAC to Penn Cove VOR. The FAA is taking this action to improve the management of air traffic operations in the State of Washington.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to modify two Federal Airways, V–165 and V–287, located in the State of Washington, due to the commissioning of the Penn Cove VOR/DME navigational aid (63 FR 24765). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends part 71 by modifying two VOR Federal airways, V–287 and V–165, due to the commissioning of the Penn Cove, WA, VOR/DME. Specifically, this action modifies Federal Airway V–165 to provide a route between Olympia and Bellingham, WA, via Penn Cove VOR. Federal Airway V–287 is modified to provide a route from the Paine VORTAC to Penn Cove VOR. This action enhances air traffic procedures by providing air traffic controllers with added flexibility for routing air traffic in the State of Washington.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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).

Adoption of the Amendment

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

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

1. The authority citation for part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—VOR Federal Airways

* * * * *

V–165 [Revised]

From Mission Bay, CA; INT Mission Bay 270° and Oceanside, CA, 177° radials; Oceanside; 24 miles, 6 miles wide, Seal Beach, CA; 6 miles wide, INT Seal Beach 287° and Los Angeles, CA, 138° radials; Los Angeles; INT Los Angeles 357° and Lake Hughes, CA, 154° radials; Lake Hughes; INT Lake Hughes 344° and Shafter, CA, 137° radials; Shafter; Porterville, CA; INT Porterville 339° and Clovis, CA, 139° radials; Clovis; 68 miles, 50 miles, 131 MSL, Mustang, NV; 40 miles, 12 AGL, 7 miles, 115 MSL, 54 miles, 135 MSL, 81 miles, 12 AGL, Lakeview, OR; 5 miles, 72 miles, 90 MSL, Deschutes, OR; 16 miles, 19 miles, 95 MSL, 24 miles, 75 MSL, 12 miles, 65 MSL, Newberg, OR; 32 miles, 45 MSL, INT Newberg 355° and Olympia, WA, 195° radials; Olympia; Penn Cove, WA; to Bellingham, WA.

* * * * *

V–287 [Revised]

From Fort Jones, CA, via INT Fort Jones 041° and Rogue Valley, OR, 157° radials; Rogue Valley; North Bend, OR; Newberg, OR; Battle Ground, WA; 20 miles, 51 miles, 45 MSL, Olympia, WA; INT Olympia 005° and Paine, WA, 256° radials; Paine; to Penn Cove, WA.

* * * * *

Issued in Washington, DC, on July 15, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–19420 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–006]

RIN 2115–AE46

Special Local Regulations for Marine Events; New Jersey Offshore Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending permanent special local regulations established for the New Jersey Offshore Grand Prix, a marine event held annually in the Atlantic Ocean along the coast of New Jersey between Asbury Park and Seaside Park, by identifying the specific date on which the regulated area will be in effect. This action is intended to provide more accurate notice of the date on which the event will occur.

DATES: This final rule is effective on July 15, 1998.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 27, 1998, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations for Marine Events; New Jersey Offshore Grand Prix, in the

Federal Register (63 FR 9979). The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

33 CFR 100.505 established special local regulations for the New Jersey Offshore Grand Prix, a marine event held annually in the Atlantic Ocean along the coast of New Jersey between Asbury Park and Seaside Park. The purpose of these regulations is to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. In the past, these regulations were implemented by publishing a notice in the **Federal Register**.

Discussion of Comments and Charges

The Coast Guard received no comments on the proposed rulemaking.

Good Cause Statement

This final rule is effective in less than 30 days because it is contrary to the public interest to delay the effective date because timely action is required to protect participants and other vessel traffic during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule merely identifies the effective period of an existing regulation and does not impose any new restrictions on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–602), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not impose any new restrictions on vessel traffic, but merely identifies the effective period of the regulation. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–602) that this final rule will not have a significant economic impact on a substantial number of small entities.

Colleciton of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34) (h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.505 is amended by revising paragraph (b) to read as follows:

§ 100.505 New Jersey Offshore Grand Prix.

* * * * *

(b) *Effective Period:* This section is effective annually on the third Wednesday in July. If the event is canceled due to weather, this section is effective the following day. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

* * * * *

Dated: July 8, 1998.

Rogert T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–19425 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–083]

RIN 2115–AA97

Safety Zone: Parade of Lights Fireworks Display, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Parade of Lights Fireworks Display in Boston Inner Harbor, Boston, MA. The safety zone is in effect from 9 p.m. until 11 p.m. on July 25, 1998. The safety zone temporarily closes all waters of Boston Harbor within four hundred (400) yards of the fireworks barge moored in approximate position 42°22′07″ N, 071°02′49″ W, approximately 400 yards east of the Coast Guard Integrated Support Command Boston. The safety zone is needed to protect vessels from the hazards posed by a fireworks display.

DATES: This rule is effective from 9 p.m. until 11 p.m. on Saturday July 25, 1998.

FOR FURTHER INFORMATION CONTACT: LT Mike Day, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3002.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On June 11, 1998 Conventures Incorporated filed a marine event permit with the Coast Guard to hold a fireworks program on Boston Harbor. This

regulation establishes a safety zone in all waters of Boston Harbor within four hundred (400) yards of the fireworks barge moored approximately 400 yards east of the Coast Guard Integrated Support Command, Boston. This safety zone is in effect from 9 p.m. until 11 p.m. on Saturday July 25, 1998. This safety zone prevents movement within the zone and is needed to protect the boating public viewing this display from the dangers posed by the fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Deep draft vessel traffic, fishing vessels and tour boats may experience minor delays in departures or arrivals due to the safety zone. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. In addition, due to the limited number and duration of the arrivals, departures and harbor transits, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. Small entities may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

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

2. Add temporary section 165.T01–083 to read as follows:

§ 165.T01–083 Safety Zone: Parade of Lights Fireworks Display, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone:

All waters of Boston Harbor within four hundred (400) yards of the fireworks barge moored in approximate position 42°22′07″N, 071°02′49″W, approximately 400 yards east of the Coast Guard Integrated Support Command Boston.

(b) *Effective date.* This section is effective from 9 p.m. until 11 p.m. on Saturday July 25, 1998.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Boston.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: July 2, 1998.

J. L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 98–19426 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–082]

RIN 2115–AA97

Safety Zone: Beverly Homecoming Fireworks Display, Beverly Harbor, Beverly, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Beverly Homecoming Fireworks Display off Woodbury Point in Beverly Harbor, Beverly, MA. The safety zone is in effect from 9 p.m. until 11.45 p.m. on Sunday, August 9, 1998. The safety zone temporarily closes all waters of Beverly Harbor within four hundred (400) yards of a fireworks barge moored in approximate position 42°32.4′ N, 070°51.5′ W. The safety zone is needed to prevent vessels from the hazards posed by a fireworks display.

DATES: This rule is effective from 9 p.m. until 11:45 p.m. on Sunday August 9, 1998.

FOR FURTHER INFORMATION CONTACT: Lt Mike Day, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3002.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective in less than 30 days after Federal Register publication. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display,

which in intended for public entertainment.

Background and Purpose

On June 5, 1998 the Beverly Harbormaster filed a marine event permit with the Coast Guard to hold a fireworks program on the waters of Beverly Harbor, Beverly, MA. The Beverly Harbormaster is sponsoring the fireworks program. This regulation establishes a safety zone in all waters of Beverly Harbor within a four hundred (400) yard radius of the fireworks barge moored in approximate position 42°32.4′ N, 070°51.5′ W. This safety zone is in effect from 9 p.m. until 11:45 p.m. on Sunday August 9, 1998. This safety zone prevents entry into or movement within this portion of Beverly Harbor, and it is needed to protect the boating public viewing this display from the dangers posed by the fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Deep draft vessel traffic, fishing vessels and tour boats may experience minor delays in departures or arrivals due to the safety zone. Costs to the shipping industry from these regulations, if any will be minor and have no significant adverse financial effect on vessel operators. In addition, due to the limited number and duration of the arrivals, departures and harbor transits, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–082 to read as follows:

§ 165.T01–082 Safety Zone: Beverly Homecoming Fireworks Display, Beverly Harbor, Beverly, MA.

(a) *Location.* The following area is a safety zone:

All waters of Beverly Harbor within four hundred (400) yards of the fireworks barge moored in approximate position 42°32.4′ N, 070°51.5′ W.

(b) *Effective date.* This section is effective from 9 p.m. until 11:45 p.m. on Sunday August 9, 1998.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Boston.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: July 2, 1998.

J. L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 98–19424 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Ancillary Service Endorsement to Allow Forwarding of First-Class Mail Destined for an Address With a Temporary Change-of-Address on File

AGENCY: Postal Service.

ACTION: Final rule; request for comments.

SUMMARY: This final rule provides an additional option for ancillary service endorsements to allow the forwarding of First-Class Mail destined for an address with a temporary change-of-address on file. This change will improve customer satisfaction by forwarding the piece to the temporary address instead of returning it to the mailer with the reason for nondelivery.

DATES: This final rule is effective on August 1, 1998. Comments must be received on or before August 21, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Address Management, National Customer Support Center, 6060 Primacy PKWY STE 201, Memphis, TN 38188–0001. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Audrey Conley, (901) 681–4474.

SUPPLEMENTARY INFORMATION: Under Domestic Mail Manual (DMM) F010.5.1,

mailers may opt to receive a notice of new address or reason for nondelivery by placing the endorsement "Return Service Requested" on all First-Class Mail. Consistent with DMM F010.5.1, undeliverable as addressed (UAA) pieces bearing this endorsement are returned to the mailer. Under present standards, the "Return Service Requested" endorsement does not provide forwarding service.

Since the implementation of the "Return Service Requested" option on July 1, 1997, the Postal Service has received requests from some mailers who use the "Return Service Requested" endorsement to have the service provide forwarding of temporary address changes. These mailers would prefer that UAA pieces destined for customers who have submitted temporary change-of-address notices to the Postal Service be forwarded to the customer rather than returned to the mailer. This change will improve customer satisfaction for these mailers by forwarding the piece to the temporary address instead of returning it to the mailer with the reason for nondelivery. Under current Postal regulations and the Privacy Act, temporary change-of-address information is not provided to mailers, therefore, this change also benefits the Postal Service by eliminating the need to return pieces bearing address correction information which would be of no use or value to the sender.

To accommodate those First-Class mailers who currently use the "Return Service Requested" endorsement, and who want pieces forwarded to the temporary address, the Postal Service has agreed to implement a new endorsement, "Temp—Return Service Requested", which would allow mailpieces to be forwarded to a temporary address when a temporary change-of-address notice is on file. This endorsement will only provide forwarding for temporary change-of-address, and does not apply to permanent change-of-address. Since this option is available only to First-Class Mailers, it is reasonable to conclude that all mailers who elect this option will be aware of the nature of the service provided and the consequences in the event a piece bearing the endorsement is undeliverable as addressed. This change is accordingly effective August 1, 1998.

The Postal Service is soliciting comments on this final rule.

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 comments on the following revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111):

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

F Forwarding and Related Services

F010 Basic Information

* * * * *

5.0 Class Treatment for Ancillary Services

5.1 Priority Mail and First-Class Mail

[Revise the table in 5.1 as follows to add the new endorsement:]

. . . . .	
"Temp—Return Service Requested".	Piece returned with new address or reason for nondelivery attached; no charge. If temporary change-of-address, piece forwarded; no charge; no separate notice of new temporary change-of-address provided.
. . . . .	

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–19464 Filed 7–17–98; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 401, 402, 403, 407, 408, 409, 411, 416, 419, 422, 424, 425, 432, 434, 436, and 452

[AGAR Case 96–03]

RIN 0599–AA00

Agriculture Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of Procurement and Property Management, USDA

ACTION: Direct final rule; Confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule that makes miscellaneous clerical or procedural amendments to the Agriculture Acquisition Regulation (AGAR).

EFFECTIVE DATE: The direct final rule published on May 15, 1998 (63 FR 26993–26996) is effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, USDA Office of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION: In a direct final rule published on May 15, 1998 (63 FR 26993–26996), we notified the public of our intent to make a number of clerical or procedural amendments to the AGAR. We intended to amend the AGAR to reflect changes in the Federal Acquisition Regulation through Federal Acquisition Circular 97–01 and to correct minor errors and omissions in the reissuance of the AGAR published on October 15, 1996 (61 FR 53645–53677).

We solicited comments concerning the direct final rule for a 30 day comment period ending June 15, 1998. We stated that the effective date of the proposed amendment would be July 14, 1998, unless we received adverse comments or notice of intent to submit adverse comments by the close of the comment period.

We received neither adverse comments nor notice of intent to submit adverse comments by June 15, 1998. Therefore, the direct final rule is effective on July 14, 1998, as scheduled.

Done at Washington, D.C., this 15th day of July, 1998.

W. R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 98–19462 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 1998, through 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels pursuant to the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of pelagic shelf rockfish in the Western Regulatory Area of the Gulf of Alaska as 620 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for pelagic shelf rockfish will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 520 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of pelagic shelf rockfish for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi,

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

[FR Doc. 98–19503 Filed 7–17–98; 2:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698I]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

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-Stevens 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 amount of the 1998 TAC of pelagic shelf rockfish in the Eastern Regulatory Area of the Gulf of Alaska was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) as 1,000 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for pelagic shelf rockfish in the Eastern Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 800 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Eastern Regulatory Area.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of pelagic shelf rockfish for the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi,

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

[FR Doc. 98–19504 Filed 7–17–98; 2:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698G]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 1998, until 2400 hrs, A.l.t., December 31, 1998.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska as 1,810 metric tons (mt). The directed fishery for Pacific ocean perch in the Western Regulatory Area was closed under § 679.20(d)(1)(iii) on July 3, 1998, (63 FR 36863, July 8, 1998) and reopened on July 15, 1998, (to be published July 21, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,610 mt, and is setting aside the remaining 200 mt mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi,

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

[FR Doc. 98–19505 Filed 7–17–98; 2:14 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698H]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 1998, through 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations that govern fishing by U.S. vessels pursuant to the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of pelagic shelf rockfish in the Central Regulatory Area of the GOA as 3,260 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for pelagic shelf rockfish will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,010 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of pelagic shelf rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further

delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi, Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–19506 Filed 7–17–98; 2:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698D]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 1998, through 2400 hrs A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of northern rockfish in the Western Regulatory Area of the Gulf of Alaska as 840 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for northern rockfish will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 740 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of northern rockfish for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi,

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

[FR Doc. 98–19507 Filed 7–17–98; 2:13 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 071698F]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for "other rockfish" in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1998 total allowable catch (TAC) of "other rockfish" in this area.

DATES: 1200 hrs, Alaska local time (A.l.t.), July 19, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) established the amount of the 1998 TAC of "other rockfish" in the Eastern Regulatory Area of the Gulf of Alaska as 1,500 metric tons (mt). The directed fishery for "other rockfish" in the Eastern Regulatory Area was closed in conjunction with the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12697, March 16, 1998) and reopened on July 12, 1998, (63 FR 38341, July 16, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 TAC for "other rockfish" will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,400 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for "other rockfish" in the Eastern Regulatory Area.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be

implemented immediately to prevent overharvesting the 1998 TAC of "other rockfish" for the Eastern Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: July 17, 1998.

Richard W. Surdi,

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

[FR Doc. 98–19508 Filed 7–17–98; 2:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 140
Wednesday, July 22, 1998

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–114–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) Model 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 series airplanes. The proposed AD would require measuring the visible length of standpipe (tube) in the top assembly of the fuel strainer assembly for the correct length, and replacing any fuel strainer assembly that does not have the correct length of standpipe. This action is prompted by reports that the fuel strainer assemblies on the affected airplanes were manufactured with the fuel standpipes incorrectly installed in the assembly housing top. The actions specified by the proposed AD are intended to prevent foreign material from entering the fuel system and engine, which could result in loss of engine power or complete engine stoppage during flight.

DATES: Comments must be received on or before September 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–114–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone: (316) 941–7550, facsimile: (316) 942–9008. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–114–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–114–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of problems with certain fuel strainer assemblies, part numbers (P/N) 0756005–2, 0756005–8, or 00756005–9, installed on certain Cessna Model 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 series airplanes. Cessna reported to the FAA that these fuel strainer assemblies were manufactured with the fuel filter standpipes (P/N 0756007) incorrectly installed in the assembly housing top sometime between December 1996 through September 1997.

This condition may cause a loss of fuel filtration between the fuel tank and the engine fuel metering system, resulting in loss of engine power or complete engine stoppage during flight.

Relevant Service Information

Cessna has issued Service Bulletins SEB97–9, dated November 17, 1997, and MEB97–12, dated November 17, 1997, which specify procedures for measuring the length of the standpipe in the top assembly of the fuel strainer assembly, and replacing any fuel strainer assembly with a standpipe that does not measure a maximum length of 1.68 inches.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent foreign material entering the fuel system and engine, which could result in loss of engine power or complete engine stoppage during flight.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 series airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require measuring the fuel strainer assembly standpipe, and replacing any fuel strainer assembly that does not have a standpipe of the correct measurement.

Cost Impact

The FAA estimates that 50,000 airplanes in the U.S. registry would be affected by the proposed AD.

The proposed measurement is estimated to take 1 workhour per airplane with the average labor rate at approximately $60 an hour. The total cost impact to accomplish the proposed inspection would be $3,000,000 for the U.S. fleet, or $60 per airplane.

The proposed replacement of the fuel strainer assembly is estimated to take 2 workhours per airplane with an average labor rate of approximately $60 per hour. Approximately 300 of the affected parts are thought to have been manufactured. The cost of parts is approximately $180 per airplane. Therefore, based on these figures, the total cost impact to accomplish the proposed replacement, if applicable, on U.S. operators is estimated to be $90,000, or $300 per airplane.

Regulatory Impact

The regulations proposed 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 proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 97–CE–114–AD.

Applicability: The following models, certificated in any category, including those manufactured in France that have a capital "F" of "FR" prefix on the model number.

Model	Serial numbers
150F	15061533 thru 15064532.
150G	15064533 thru 15064969.
150G	15064971 thru 15067198.
150H	15067199 thru 15069308.
150H	649.
150J	15069309 thru 15071128.
150K	15071129 thru 15072003.
150L	15072004 thru 15072628.
150L	15072629 thru 15073658.
150L	15073659 thru 15074850.
150L	15074851 thru 15075781.
150M	15075782 thru 15077005.
150M	15077006 thru 15078505.
150M	15078506 thru 15079405.
A150K	A1500001 thru A1500226.
A150L	A1500227 thru A1500276.
A150L	A1500277 thru A1500342.
A150L	A1500343 thru A1500429.
A150L	A1500430 thru A1500432.
A150L	A1500434 thru A1500523.
A150M	A1500524 thru A1500609.
A150M	15064970.
A150M	A1500610 thru A1500684.
A150M	A1500685 thru A1500734.
152	15279406 thru 15282031.
152	15282032 thru 15283591.
152	15283592 thru 15284541.
152	15284542 thru 15285161.
152	15285162 thru 15285594.
152	15285595 thru 15285833.
152	15285834 thru 15285939.
152	15285940 thru 15286033.
A152	A1520735 thru A1520808.
A152	A1500433.
A152	A1520809 thru A1520878.
A152	681.
A152	A1520879 thru A1520943.
A152	A1520944 thru A1520983.
A152	A1520984 thru A1521014.
A152	A1521015 thru A1521025.
A152	A1521026 thru A1521027.
A152	A1521028 thru A1521049.
172F	17251823 thru 17253392.

Model	Serial numbers
172G	17253393 thru 17254892.
172H	17254893 thru 17256492.
172H	17256494 thru 17256512.
172H	638.
172I	17256513 thru 17257161.
172K	17257162 thru 17258486.
172K	17258487 thru 17259223.
172L	17259224 thru 17259903.
172L	17259904 thru 17260758.
172M	17260759 thru 17261444.
172M	17261446 thru 17261577.
172M	17261579 thru 17261898.
172M	17256493.
172M	17261899 thru 17263458.
172M	17263459 thru 17265684.
172M	17265685 thru 17267584.
172N	17267585 thru 17269309.
172N	17261445.
172N	17269310 thru 17270049.
172N	17270051 thru 17271034.
172N	17261578.
172N	17271035 thru 17272884.
172N	17272885 thru 17274009.
172N	17270050.
172P	17274010 thru 17275034.
172P	17275035 thru 17275759.
172P	17275760 thru 17276079.
172P	17276080 thru 17276259.
172P	17276260 thru 17276516.
172P	17276517 thru 17276654.
172Q	17275869.
172Q	17275927 thru 17275934.
172Q	17275952, 17275959, 17275960.
172Q	17275962, 17275964, 17275965.
172Q	17275967, 17275968, 17275969.
172Q	17275971, 17275992, 17275999.
172Q	17276002, 17276005, 17276029.
172Q	17276032, 17276042, 17276045.
172Q	17276051, 17276052, 17276054.
172Q	17276101, 17276109, 17276140.
172Q	17276147, 17276188, 17276211.
R172E (T41)	R172–0001 thru R172–0335.
R172F (T41)	R172–0336 thru R172–0409.
R172G (T41)	R1720410 thru R1720444.
R172H (T41)	R1720445 thru R1720494.
R172H (T41)	R1720495 thru R1720546.
R172H (T41)	R1720547 thru R1720620.
R172J	P17257189.
R172K	R1722000 thru R1722724.
R172K	R1722725 thru R1722929.
R172K	R1722930 thru R1723199.
R172K	680.
R172K	R1723200 thru R1723397.
R172K	R1723397 thru R1723399.
R172K	R1723400 thru R1723454.
172RG	172RG0001 thru 172RG0570.
172RG	172RG0571 thru 172RG0890.
172RG	691.
177	17700001.
177	17700003 thru 17701164.
177	661.
177A	17701165 thru 17701370.
177B	17701371 thru 17701471.
177B	17701473 thru 17701530.
177B	17701531 thru 17701633.
177B	17700002.
177B	17701634 thru 17701773.
177B	17701774 thru 17701973.
177B	17701974 thru 17702123.
177B	17702124 thru 17702313.
177B	17701472.
177B	17702314 thru 17702522.
177B	17702523 thru 17702672.
177B	17702673 thru 17702752.

Model	Serial numbers
177RG	177RG0001 thru 177RG0212.
177RG	177RG0213 thru 177RG0282.
177RG	177RG0283 thru 177RG0418.
177RG	177RG0420 thru 177RG0432.
177RG	177RG0433 thru 177RG0592.
177RG	177RG0593 thru 177RG0787.
177RG	177RG0788 thru 177RG1051.
177RG	177RG1052 thru 177RG1266.
177RG	177RG1267 thru 177RG1366.
177RG	177RG0419.
180H	18051446 thru 18052284.
180H	645.
180J	18052285 thru 18052489.
180J	18052491 thru 18052770.
180K	18052771 thru 18052905.
180K	18052906 thru 18053000.
180K	18053001 thru 18053115.
180K	18052490.
180K	18053116 thru 18053167.
180K	18053168 thru 18053203.
182H	18255846 thru 18256684.
182H	634.
182J	18256685 thru 18257625.
182K	18257626 thru 18257698.
182K	18257700 thru 18258505.
182K	18255845.
182L	18258506 thru 18259305.
182M	18259306 thru 18260055.
182M	18257699.
182N	18260056 thru 18260445.
182N	18260446 thru 18260825.
182P	18260826 thru 18261425.
182P	18261426 thru 18262465.
182P	18262466 thru 18263475.
182P	18263476 thru 18263478.
182P	18263480 thru 18264295.
182P	675.
182P	18264296 thru 18265175.
182Q	18265176 thru 18265965.
182Q	18265966 thru 18266590.
182Q	18263479.
182Q	18266591 thru 18267300.
182Q	18267301.
182Q	18267303 thru 18267715.
182R/T182	18267716 thru 18268055.
182R/T182	18267302.
182R/T182	18268056 thru 18268293.
182R/T182	18268294 thru 18268368.
182R/T182	18268369 thru 18268434.
182R/T182	18268435 thru 18268541.
182R	18268542 thru 18268586.
R182	R18200002 thru R18200583.
R182/TR182	R18200584 thru R18201313.
R182/TR182	R18200001.
R182/TR182	R18201314.
R182/TR182	R18201316 thru R18201628.
R182/TR182	R18201629 thru R18201798.
R182/TR182	R18201799 thru R18201928.
R182/TR182	R18201929 thru R18201973.
R182/TR182	R18201974 thru R18201999.
R182/TR182	R18202000 thru R18202031.
R182/TR182	R18201315.
R182/TR182	R18202032 thru R18202039.
185D	185–0777 thru 185–0967.
185E	185–0968 thru 185–1149.
A185E	185–0968 thru 185–1149.
A185E	185–1150 thru 185–1300
A185E	185–1301 thru 185–1447.
A185E	185–1448 thru 185–1599.
A185E	18501600 thru 18501934.
A185E	18501935 thru 18502090.
A185F	18502091 thru 18502299.
A185F	18502301 thru 18502310.
A185F	652.

Model	Serial numbers
A185F	18502311 thru 18502565.
A185F	18502566 thru 18502838.
A185F	18502839 thru 18503153.
A185F	18503154 thru 18503458.
A185F	18503459 thru 18503683.
A185F	18503684 thru 18503938.
A185F	18502300.
A185F	18503939 thru 18504138.
A185F	18504139 thru 18504328.
A185F	18504329 thru 18504394.
A185F	18504395 thru 18504415.
A185F	18504416 thru 18504424.
A185F	18504425 thru 18504448.
188	188–0001 thru 188–0572.
188	653.
A188	188–0001 thru 188–0572.
A188	653.
188A	18800573 thru 18800832.
A188A	18800573 thru 18800832.
188B	18800833 thru 18802348.
A188B	18800833 thru 18803973.
A188B	18800967T thru 1 8803973T.
A88B	678T.
T188C	T18803325T thru T18803974T.
T188C	T18803307T, T18803308T.
T188C	T18802839T.
U206	U206–0276 thru U206–0437.
U206A	U206–0438 thru U206–0656.
TU206A	U206–0487 thru U206–0656.
U206B/TU206B	U206–0657 thru U206–0914.
U206C/TU206C	U206–0915 thru U206–1234.
U206D/TU206D	U206–1235 thru U206–1444.
U206D/TU206D	U20601445 thru U20601587.
U206E/TU206E	U20601588 thru U20601700.
U206F/TU206F	U20601701 thru U20601874
U206F/TU206F	U20601875 thru U20602199.
U206F/TU206F	U20602200 thru U20602579.
U206F/TU206F	U20602580 thru U20602588.
U206F/TU206F	U20602590 thru U20603020.
U206F/TU206F	U20603021 thru U20603521.
U206G/TU206G	U20603522 thru U20604074.
U206G/TU206G	676.
U206G/TU206G	U20604075 thru U20604649.
U206G/TU206G	U20604650 thru U20605309.
U206G/TU206G	U20602589.
U206G/TU206G	U20605310 thru U20605919.
U206G/TU206G	U20605920 thru U20606439.
U206G/TU206G	U20606440 thru U20606699.
U206G/TU206G	U20606700 thru U20606788.
U206G/TU206G	U20606789 thru U20606846.
P206	P206–0002 thru P206–0160.
P206A	P206–0161 thru P206–0306.
TP206A	P206–0161 thru P206–0306.
P206B/TP206B	P206–0307 thru P206–0419.
P206C/TP206C	P206–0420 thru P206–0519.
P206D/TP206D	P206–0520 thru P206–0603.
P206E/TP206E	P20600604 thru P20600647.
P206E/TP206E	P206–0001.
207/T207	20700001 thru 20700148.
207/T207	20700149 thru 20700190.
207/T207	20700191 thru 20700205.
207/T207	20700206 thru 20700215.
207/T207	20700216 thru 20700227.
207/T207	20700228 thru 20700267.
207/T207	20700268 thru 20700314.
207/T207	20700315 thru 20700362.
207A/T207A	20700363 thru 20700414.
207A/T207A	20700415 thru 20700482.
207A/T207A	20700483 thru 20700562.
207A/T207A	20700563 thru 20700654.
207A/T207A	20700655 thru 20700729.
207A/T207A	20700730 thru 20700762.
207AUT207A	20700763 thru 20700767.
207A/T207A	20700768 thru 20700788.

Model	Serial numbers
21OE	21058511 thru 21058715.
21OF	21058716 thru 21058818.
21OG	21058819 thru 21058936.
210H	21058937 thru 21059061.
21OJ	21059062 thru 21059199.
21OK/T21OK	21059200 thru 21059351.
210K/T21OK	21059352 thru 21059502.
21OL/T21OL	21059503 thru 21059719.
21OL/T21OL	21059720 thru 21060089.
21OL/T21OL	21060090 thru 21060539.
210L/T210L	21060540 thru 21061039.
21OL/T21OL	21061040 thru 21061041.
210L/T21OL	21061043 thru 21061573.
21OM/T21OM	21061574 thru 21062273.
21OM/T21OM	21062274 thru 21062954.
21OM/T21OM	21061042.
21ON/T21ON	21062955 thru 21063640.
21ON/T21ON	21063641 thru 21064135.
210N/T210N	21064136 thru 21064535.
T21OF	T210–0001 thru T210–0197
T21OG	T210–0198 thru T210–0307.
T21OH	T210–0308 thru T210–0392.
T210J	T210–0393 thru T210–0454.
T210J	21058140.
P21ON	P21000001 thru P21000150.
P21ON	P21000151 thru P21000385.
P210N	P21000386 thru P21000590.
P210N	P21000591 thru P21000760.
A–150L	A–1501001 thru A–1501039.
A–A150L	A–A1500001 thru A–A1500009.
A182J	A182–0001 thru A182–0056.
A182K	A182–0057 thru A182–0096.
A182L	A182–0097 thru A182–0116.
A182N	A182–0117 thru A182–0136.
A182N	A182–0137 thru A182–0146.
A182N	A182–0147 thru A182–0148.
A–A188B	A–A1880001 thru A–A1880034.
F150F	F150–0001 thru F150–0067.
F150G	F150–0068 thru F150–0219.
F150H	F150–0220 thru F150–0389.
F15J	150–0390 thru F150–0529.
F150K	F15000530 thru F15000658.
F150L	F15000659 thru F15000738.
F150L	F15000739 thru F15000863.
F150L	F15000864 thru F15001013.
F150L	F15001014 thru F15001143.
F150M	F15001144 thru F15001248.
F150M	F15001249 thru F15001338.
F150M	F15001339 thru F15001428.
FA150K	FA1500001 thru FA1500081.
FA150L	FA1500082 thru FA1500120.
FA150L	FA1500121 thru FA1500166.
FA150L	FA1500167 thru FA1500211.
FA150L	FA1500212 thru FA1500261.
FA150M	FA1500262 thru FA1500281.
FA150M	FA1500282 thru FA1500311.
FA150M	FA1500312 thru FA1500336.
FRA150L	FRA1500121 thru FRA1500166.
FRA150L	FRA1500167 thru FRA1500211.
FRA150L	FRA1500212 thru FRA1500261.
FRA150M	FRA1500262 thru FRA1500281.
FRA150M	FRA1500282 thru FRA1500311.
F152	F15201429 thru F15201528.
F152	F15201529 thru F15201673.
F152	F15201674 thru F15201808.
F152	F15201809 thru F15201893.
F152	F15201894 thru F15201928.
F152	F15201929 thru F15201943.
F152	F15201944 thru F15201952.
F152	F15201953 thru F15201965.
F152	F15201966 thru F15201980.
FA152	FA1520337 thru FA1520347.
FA152	FA1520348 thru FA1520357.
FA152	FA1520358 thru FA1520372.

Model	Serial numbers
FA152	FA1520373 thru FA1520377.
FA152	FA1520378 thru FA1520382.
FA152	FA1520383 thru FA1520387.
FA152	FA1520388 thru FA1520415.
FA152	FA1520416 thru FA1520425.
F172F	F172–086 thru F172–179.
F172G	F172–180 thru F172–319.
F172H	F172–320 thru F172–431.
F172H	F172–436 thru F172–442.
F172H	F172–444 thru F172–446.
F172H	F172–432 thru F172–435.
F172H	F172–443.
F172H	F172–447 thru F172–559.
F172H	F172–560 thru F172–654.
F172H	F17200655 thru F17200754.
F172K	F17200755 thru F17200804.
F172L	F17200805 thru F17200904.
F172M	F17200905 thru F17201034.
F172M	F17201035 thru F17201234.
F172M	F17201235 thru F17201384.
F172M	F17201385 thru F17201514.
F172N	F17201515 thru F17201639.
F172N	F17201640 thru F17201749.
F172N	F17201750 thru F17201909.
F172N	F17201910 thru F17202039.
F172P	F17202040 thru F17202134.
F172P	F17202135 thru F17202194.
F172P	F17202195 thru F17202216.
F172P	F17202217 thru F17202233.
F172P	F17202234 thru F17202238.
F172P	F17202239 thru F17202254.
FR172E	FR17200001 thru FR17200060.
FR172F	FR17200061 thru FR17200145.
FR172G	FR17200146 thru FR17200225.
FR172H	FR17200226 thru FR17200275.
FR172H	FR17200276 thru FR17200350.
FR172J	FR17200351 thru FR17200440.
FR172J	FR17200441 thru FR17200530.
FR172J	FR17200531 thru FR17200559.
FR172J	FR17200560 thru FR17200590.
FR172K	FR17200591 thru FR17200620.
FR172K	FR17200621 thru FR17200630.
FR172K	FR17200631 thru FR17200655.
FR172K	FR17200650 thru FR17200665.
FR172K	FR17200666 thru FR17200675.
F177RG	F177RG0001 thru F177RG0042.
F177RG	F177RG0043 thru F177RG0062.
F177RG	F177RG0063 thru F177RG0092.
F177RG	F177RG0093 thru F177RG0122.
F177RG	F177RG0123 thru F177RG0138.
F177RG	F177RG0139 thru F177RG0160.
F177RG	F177RG0161 thru F177RG0177.
F182P	F18200001 thru F18200025.
F182Q	F18200026 thru F18200064.
F182Q	F18200065 thru F18200094.
F182Q	F18200095 thru F18200129.
F182Q	F18200130 thru F18200169.
FR182	FR18200001 thru FR18200020.
FR182	FR18200021 thru FR18200045.
FR182	FR18200046 thru FR18200070.
337	337–002 thru 337–239.
337A	337–240 thru 337–305.
337A	337–307 thru 337–469.
337A	337–471 thru 337–525.
337B/T337B	337–526 thru 337–568.
337B/T337B	337–570 thru 337–755.
337B/T337B	337–0001, and 337–0470.
M337B	337–M0001 thru 227–M0476.
337C/T337C	337–0756 thru 337–0978.
337D/T337D	337–0979 thru 337–1193.
337E/T337E	33701194 thru 33701316.
337F	33701317 thru 33701398.
T337F	33701317 thru 33701398.
T337	33700569.

Model	Serial numbers
337F	33701399 thru 33701448.
337F	33701450 thru 33701462.
337F	33700306.
337G	33701463 thru 33701550.
337G	33701551 thru 33701606.
337G	33701607 thru 33701671.
337G	33701672 thru 33701748.
337G	33701749 thru 33701815.
337G	33701449.
337H/T337H	33701816 thru 33701853.
337H/T337H	33701855 thru 33701874.
337H/T337H	33701875 thru 33701919.
337H/T337H	33701921.
337H/T337H	33701854.
337H/T337H	33701922.
T337H–SP	33701920.
T337H–SP	33701923 thru 33701927.
T337H–SP	33701951 thru 33701955.
T337G	P3370001 thru P3370148.
T337G	P3370149 thru P3370193.
T337G	P3370194 thru P3370195 T337G, and P3370197 thru P3370225.
T337G	677.
T337G	P3370226 thru P3370257.
T337G	P3370258 thru P3370292.
P337H	P3370293 thru P3370318.
P337H	P3370319 thru P3370341.
P337H	P3370196.
P337H	P3370342 thru P3370356.
F337E/FT337E	F33700001 thru F33700024.
F337F/FT337F	F33700025 thru F33700045.
F337F/FT337F	F33700046 thru F33700055.
F337G	F33700056 thru F33700063.
F337G	F33700064 thru F33700071.
F337G	F33700072 thru F33700076.
F337G	F33700077 thru F33700079.
F337G	F33700080 thru F33700084.
F337H	F33700085 thru F33700086.
FTB337	FTB3370001 thru FTB3370062.
FT337GP	FP33700001 thru FP33700008.
FT337GP	FP33700009 thru FP33700013.
FT337GP	FP33700014 thru FP33700015.
FT337GP	FP33700016 thru FP33700017.
FT337GP	FP33700018 thru FP33700022.
FT337HP	FP33700023 thru FP33700023.

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

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent foreign material from entering the fuel system and engine, which could result in loss of engine power or complete engine stoppage during flight, accomplish the following:

(a) Measure the standpipe in the fuel strainer assembly (tube in the filter strainer top assembly) for a visible maximum length of 1.68 inches in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Detail A in Cessna Single Engine Service Bulletin (SB) No. SEB97–9, dated November 17, 1997, or Cessna Multi-engine SB No. MEB97–12, dated November 17, 1997, whichever is applicable.

(b) If the standpipe does not measure a maximum length of 1.68 inches, prior to further flight, replace the filter strainer top assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Cessna Single Engine SB No. SEB97–9, dated November 17, 1997, or Cessna Multi-engine SB No. MEB97–12, dated November 17, 1997, whichever is applicable.

(c) As of the effective date of this AD, no person may install a fuel filter assembly that has a standpipe not measuring a maximum length of 1.68 inches on any of the affected Cessna airplanes.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to The Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277, or may examine these documents at

the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19046 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, and corrective action, if necessary; installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system; and replacement of the valve block of the ground spoiler system with a new part. This proposal also would require eventual replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which would constitute terminating action for the repetitive tests. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that two conditions may lead to the uncommanded unlocking of the ground spoilers. First, a manufacturing defect in a certain batch of relief restrictor valves can lead to internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system. Second, the design of certain hydraulic components may cause the hydraulic system to be susceptible to the buildup of pressure in the hydraulic return line and in the bypass valve return line. These conditions, if not corrected, could result in the uncommanded unlocking and deployment of the ground spoilers during takeoff or in flight, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–29–220, dated May 20, 1997, and Revision 1, dated May 4, 1998, which describe procedures for performing repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve. These tests include: a major leakage test of the hydraulic components, a functional test of the return filter element, a functional test of the bypass valve of the return filter element, and a functional test of the shutoff valve with the bypass valve.

Dornier has issued Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997, which describes procedures for installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system.

In addition, Dornier has issued Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997, which describes procedures for replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which would eliminate the need for the repetitive tests described previously.

Dornier also has issued Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, which describes procedures for replacement of the valve block of the ground spoiler system with a new part. Accomplishment of the actions specified in the service bulletins is

intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 97–189, dated June 19, 1997; 1998–031, dated January 15, 1998; 1998–046, dated January 29, 1998; and 1997–331/2, dated March 12, 1998; in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletins

Operators should note that Dornier Service Bulletins SB–328–29–220, dated May 20, 1997, and SB–328–29–220, Revision 1, dated May 4, 1998, do not specify corrective action for disposition of certain discrepant conditions. However, if any discrepancy is detected during the testing to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, this proposal would require, prior to further flight, replacement of the relief restrictor valves of the ground spoiler system with a redesigned part, in accordance with Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997.

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed tests, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the tests proposed by this AD on U.S. operators is estimated to be $180 per airplane, per test cycle.

It would take approximately 16 work hours per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $960 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement of the relief restrictor valves, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $120 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement of the valve block, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement proposed by this AD on U.S. operators is estimated to be $120 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 98–NM–140–AD.

Applicability: Model 328–100 series airplanes, certificated in any category, equipped with active ground spoiler option 040–001; as listed in the following service bulletins:

- Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998;
- Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997;
- Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997; and
- Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 3,000 total flight hours, or within 300 flight hours after the effective date of this AD, whichever occurs later: Perform tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, in accordance with Dornier Service Bulletin SB–328–29–220, dated May 20, 1997, or Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998.

(1) If no discrepancy is detected, repeat the tests thereafter at intervals not to exceed 3,000 flight hours, until accomplishment of the replacement required by paragraph (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the replacement required by paragraph (c) of this AD.

(b) Install additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system, in accordance with Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997, at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3086, equipped with ground spoiler actuator, part number 1059A0000–02: Install within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3086, and equipped with ground spoiler actuator, part number 1059A0000–03: Install within 7 days after the effective date of this AD.

(c) Replace the relief restrictor valves of the ground spoiler system, part number ZRV87–2, with a redesigned valve having part number ZRV87–3, in accordance with Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (c)(1) or (c)(2) of this AD. Accomplishment of this replacement constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(d) Replace the valve block of the ground spoiler system with a new part, in accordance with Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(e) As of the effective date of this AD, no person shall install on the ground spoiler system of any airplane, a valve block, part number 1060A0000–05, or a relief restrictor valve, part number ZRV87–2.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in German airworthiness directives 97–189, dated June 19, 1997; 1998–031, dated January 15, 1998; 1998–046, dated January 29, 1998; and 1997–331/2, dated March 12, 1998.

Issued in Renton, Washington, on July 15, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19458 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Mooney Aircraft Corporation Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Mooney Aircraft Corporation (Mooney) Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes. The proposed AD would require repetitively inspecting the aileron control link welded area, and if cracks are found, replacing the control link with a part of improved design. Service difficulty reports (SDR's) on the aileron control link and reported failures of the aileron control link prompted the proposed action. The actions specified by the proposed AD are intended to detect and correct cracked aileron control links, which could result in loss of aileron control and loss of the airplane.

DATES: Comments must be received on or before September 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Bob D. May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–20–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several SDR's from the field on the failure of the aileron center control link during flight and on the ground for the Mooney M20 series airplanes. These failures are occurring in the heat-affected zones of the weld joints at the 90-degree corners of the assemblies. In 1994, the airplane design was changed to incorporate a reinforcing gusset in the corner joints. This design change was accomplished as field repair or rework and was found not to be a practical alteration of the part. Since then, the manufacturer has designed an improved part.

Relevant Service Information

Mooney Aircraft Corporation has issued Engineering Design Service Bulletin No. M20–264, dated February 1, 1998, which specifies procedures for inspecting for a reinforcing gusset or cracks in the aileron control link at the second 90-degree angled joint from the Heim bearing. If the gusset is found, then no further action is required. If no gusset is found, the service information specifies procedures for repetitively inspecting (using a magnetic particle method) for cracks at the second 90-degree angled joint, and if cracks are found, replacing the aileron control link with one of improved design. The installation of the improved part is considered a terminating action to the repetitive inspections. If no cracks are found, the service information specifies repetitively inspecting the area until cracks are found, and then replacing the aileron control link with a part of improved design.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to detect and correct cracked aileron control links, which could result in loss of aileron control and loss of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Mooney Model M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes of the same type design, the proposed AD would require inspecting the aileron control link for a reinforcing gusset, and if there is no gusset, repetitively inspecting the aileron control links (left-hand and right-hand) for cracks using a magnetic particle method. If a crack is found, the proposed AD would require replacing the aileron control links with parts of improved design. Replacing the aileron control link would be considered a terminating action for the repetitive inspections. Accomplishment of the proposed actions would be required in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 7,500 airplanes in the U.S. registry would be affected by the proposed initial inspections, that it would take approximately 2 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection specified in the proposed AD on U.S. operators is estimated to be $900,000, or $120 per airplane.

The FAA has no way of determining the number of repetitive inspections that would be incurred over the life of the airplane or whether a cracked part would be found as the result of the proposed initial inspection. Therefore, these actions are not figured into the initial total cost impact estimated for the proposed AD.

Regulatory Impact

The regulations proposed 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 proposal would 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Mooney Aircraft Corporation: Docket No. 98–CE–20–AD.

Applicability: The following airplane models and serial numbers, certificated in any category.

Models	Serial numbers
M20B	all serial numbers
M20C	all serial numbers
M20D	all serial numbers
M20E	all serial numbers
M20F	all serial numbers
M20G	all serial numbers
M20L	all serial numbers
Model M20J	24–0001 through 24–3359
Model M20K	25–0001 through 25–1999
Model 20M	27–0001 through 27–0197
Model M20R	29–0001 through 29–0042

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracked aileron control links, which could result in loss of

aileron control and loss of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, visually inspect the aileron control links (left-hand and right-hand) at the second 90-degree angle joint from the second Heim bearing for a reinforcement gusset in accordance with the Instructions section of Engineering Design Service Bulletin (SB) No. M20–264, Issue Date:

February 1, 1998.

(1) If a reinforcement gusset is found, no further action is required.

(2) If a reinforcement gusset is not found, prior to further flight, inspect the aileron control links, using a magnetic particle method, for any cracks in accordance with the Instructions section of Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(i) If cracks are found, prior to further flight, replace the aileron control link with a part of improved design in accordance with the Instructions section of Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(ii) If no cracks are found, re-inspect for cracks at intervals not to exceed 100 hours TIS in accordance with the Instructions section of Engineering Design SB No. M20–264, Issue Date: February 1, 1998. If cracks are found during any inspection required by paragraphs (a)(2) and (a)(2)(ii) of this AD, prior to further flight, replace the aileron control link with a part of improved design in accordance with the Instructions section of Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(b) Replacing the aileron control link in accordance with Engineering Design SB No. M20–264, Issue Date: February 1, 1998, is considered a terminating action for the repetitive inspections required in paragraph (a)(2)(ii) of this AD and may be accomplished at any time.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas, 78028; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 16, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–19486 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13–98–023]

RIN 2115–AE84

Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard, after consultation with the Department of Justice, Department of Interior and the Department of Commerce, proposes to establish a permanent regulated navigation area along the northwest Washington coast and in a portion of the entrance of the Strait of Juan de Fuca. The regulated navigation area would be used to reduce the danger of life and property in the vicinity of Makah whale hunting activities. Within the regulated navigation area a moving exclusionary zone around the Makah hunting vessel would be created for the duration of each hunt.

DATES: Comments must reach the Coast Guard on or before September 8, 1998.

ADDRESSES: You may mail comments to the Commander(m), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, WA 98174, or deliver them to room 3506 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 206–220–7210.

The Thirteenth Coast Guard District Marine Safety Division maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3506, Thirteenth Coast Guard District Offices, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chris Woodley (206) 220–7210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD98–023) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard is establishing a forty-five day comment period for this proposed rule instead of the usual sixty day comment period. The shortened comment period should be sufficient to allow the public to comment on the proposed rule. The shortened comment period is needed so that an effective rule may be put into place by the beginning of the first Makah whale hunt. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Thirteenth Coast Guard District at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The United States Government, on behalf of the Makah Tribe, obtained a quota for the Makah Tribe from the International Whaling Commission to kill up to five gray whales annually in the Makah's usual and accustomed fishing area off the northwest coast of Washington and in the entrance of the Strait of Juan de Fuca. The hunts will be accomplished using harpoons and a .50 caliber hunting rifle, fired from a small boat. The Coast Guard proposes this regulated navigation area and moving exclusionary zone to reduce the dangers to persons and vessels in the vicinity of each hunt. The uncertain reactions of a pursued or wounded whale and the inherent dangers in firing a hunting rifle from a pitching and rolling small boat could potentially endanger life and property if persons and vessels are not excluded from the

immediate vicinity of a hunt. In addition, the Departments of Justice and the Interior have examined the Makah Indian Tribe's Treaty right to hunt whales and informed the Coast Guard that physical interference with the hunt is inconsistent with federal law.

Discussion of Proposed Rule

The proposed rule would establish a permanent regulated navigation area. The regulated area would extend out three nautical miles from shore along the northwest Washington Coast and from shore to the edge of the traffic separation scheme in a portion of the entrance to the Straight of Juan de Fuca. The regulation would not affect normal transit or navigation of the area except during, and in the immediate vicinity of, a hunt. Within the regulated navigation area, a moving exclusionary zone would surround the Makah hunting vessel during each whale hunt. The proposed rule imposes no other restrictions on navigation.

For the duration of each hunt, vessels and persons would be excluded from the column of water from the surface to the seabed within a radius of 500 yards centered on the Makah hunting vessel. This moving exclusionary zone is proposed in ordered to reduce the danger to nearly vessels and persons by minimizing the risks from the uncertain movements of a pursued or wounded whale and from the dangers of stray rifle fire and ricochets off the water. The activation of the moving exclusionary zone would be signaled by the flying of the international numeral pennant five (5) from a Makah whale hunting vessel. Only Makah vessels actually engaged in pursuing, harpooning, shooting, securing, or towing whales are authorized to fly pennant five (5) within the regulated navigation area. The Makah Tribe would notify mariners of the moving exclusionary zone by a SECURITE broadcast made once an hour on channel 16 VHF–FM beginning one half hour before the hunt. The moving exclusionary zone would only be active while hunting operations are ongoing and the international numeral pennant five (5) is flown. The signal flag would be authorized to be flown from the Makah hunting vessel only during an actual whale hunt.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because of the limited number of whales that can be taken annually and the small size of the moving exclusionary zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Small entities that might be affected could include whale-watching ventures, tugboats and their tows, small passenger vessels, and commercial fishermen. The small size of the moving exclusionary zone should minimize any effects from the proposed rule on these small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

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

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add § 165.1310 to read as follows:

§ 165.1310 Strait of Juan de Fuca and adjacent coastal waters of Northwest Washington; Makah whale hunting—regulated navigation area.

(a) The following area is a regulated navigation area: From 48°10–0′ N, 124°44.0′ W northward and eastward along the shoreline of Washington State to 48°20.0′ N, 124°29.5′ W; thence due north to the southern boundary of the traffic separation scheme in the Strait of Juan de Fuca at 48°23.0′ N, 124°29.0′ W; thence westerly and southerly along the southern boundary of the traffic separation scheme to its intersection with the three nautical mile line at 48°22.5′ N, 124°49.0′ W; thence southerly along the three nautical mile line to 48°10.0′ N, 124°51.5′ W; thence due east back to the shoreline of Washington at 48°10.0′ N, 124°44.0′ W. Datum: NAD 1983.

(b) During a whale hunt, the following area within the regulated navigation area is a moving exclusionary zone: The column of water from the surface to the seabed with a radius of 500 yards centered on a Makah hunting vessel displaying pennant five (5). This zone is activated for the duration of the hunt and subsequent movement of the whale to shore.

(c) Unless otherwise authorized by the Commander, Thirteenth Coast Guard District or his representative, the area within the moving exclusionary zone is closed to all vessels and persons whenever the Makah Tribe is engaged in a whale hunt and flying pennant five

(5), with the exception that the master of a Makah whale hunting vessel displaying pennant five (5) may authorize vessels assisting the hunt to enter the moving exclusionary zone.

(d) The activation of the moving exclusionary zone described in paragraph (b) of this section is signaled by the display of the international numeral pennant five (5) is from the Makah hunting vessel. This numeral pennant five (5) is authorized to be displayed only from the Mekah hunting vessel during an actual whale hunt.

(e) The Mekah Tribe will make hourly SECURITE broadcasts notifying mariners of the hunt and the moving exclusionary zone on channel 16 VHF–FM while the hunt is in effect.

J. David Spade,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 98–19423 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 072–0085; FRL–6125–6]

Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate the Tucson Air Planning Area (TAPA) to attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and to approve a maintenance plan that will insure that the area remains in attainment. Under the 1990 amendments of the Clean Air Act (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is proposing to approve the TAPA redesignation as meeting the requirements set forth in the CAA.

DATES: Written comments on this proposal must be postmarked on or before August 21, 1998.

ADDRESSES: Comments should be addressed to Eleanor Kaplan at the Region 9 address listed.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations between 8:00 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Region 9, Air Division, Air Planning Office, (AIR–2), 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1159

Arizona Department of Environmental Quality, Library 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217

Pima County Department of Environmental Quality, 130 West Congress, Tucson, Arizona 85701, (520) 740–3340.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), Air Division, United States US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1159.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Pub. L., 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q. Section 107(d)(1)(C) of the amended Act provides that each CO area designated nonattainment, attainment, or unclassifiable immediately before the date of enactment of the Act is designated, by operation of law, as a nonattainment, attainment, or unclassifiable area, respectively. On November 6, 1991, the Tucson Area of Pima County was classified by operation of law as nonattainment, not classified. See 56 FR 56716 (November 6, 1991). The extent of the Tucson Area is described in 40 CFR 81.303 as the Tuscon [sic] Area, Pima County (part) by Township and Range.

EPA describes areas as "not classified" if they were designated nonattainment both prior to enactment of the CAAA and (pursuant to section 107(d)(1)(C)) at enactment, and if they did not violate the primary NAAQS for CO in either year for the 2-year period 1988 through 1989. See 57 FR 13535 (April 16, 1992).

The Pima Association of Governments (PAG), as the designated air planning agency for Pima County, has collected ambient monitoring data that show no violation of the CO NAAQS in the TAPA during the years 1993 through the present. (See discussion in Section III below.) Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on August 21, 1996 the Arizona Department of Environmental Quality (ADEQ) requested redesignation of the area to attainment with respect to the CO NAAQS and submitted a CO limited maintenance plan (LMP)for the TAPA. The PAG's Regional Council had prepared and adopted the LMP on June 26, 1996. ADEQ submitted evidence that public hearings were held on April 22, 1996 and June 20, 1996. In accordance with section 110(k)(1)(B) of the Act, the TAPA CO redesignation request and maintenance plan was deemed complete by operation of law on February 27, 1997. On October 6, 1997 ADEQ submitted an amended CO LMP for the TAPA including evidence that a public hearing was held on August 20, 1997 on the amendments to the plan.

II. Redesignation Evaluation Criteria

Section 107(d)(3)(E) of the CAA provides specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. the area has met all relevant requirements under section 110 and part D of the Act;

3. the air quality improvement must be permanent and enforceable; and

4. the area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

III. Review of State Submittal

The Arizona redesignation request for the TAPA meets the requirements of section 107(d)(3)(E) noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Arizona has quality assured ambient air monitoring data showing that the TAPA has met the CO NAAQS. The Arizona request is based on an analysis of quality assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. The ambient air CO monitoring data for the period from July 1, 1993 through December 31, 1995 relied upon by Arizona in its redesignation request shows no exceedances of the CO NAAQS in the TAPA. Additionally, based on data retrieved from the Aerometric Information and Retrieval System (AIRS), there have been no exceedances of the CO standard from 1995 to the present. Because the area has complete quality assured data

showing no exceedance of the standard over at least two consecutive years (1994 and 1995), and has not violated the standard since that time, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.8 and appendix C).

2. Meeting Applicable Requirements: Section 110 and Part D

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA has reviewed the Arizona SIP to ensure that it contains all measures that were due under the amended Act prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. [1] All of the SIP requirements must be met by the TAPA and approved into the SIP by EPA by the time the area is redesignated.

a. Section 110 Requirements

On April 16, 1982 EPA approved changes to the air pollution control regulations of the Pima County Health Department submitted by the Arizona Department of Health Services as revisions to the Arizona SIP. See 47 FR 16326–16328 (April 16, 1982). In this action EPA found that the rules, which were generally administrative in nature, were in accordance with EPA policy and 40 CFR Part 51, "Requirements For Preparation, Adoption, and Submittal of Implementation Plans".

The maintenance plan submitted by the TAPA on October 6, 1997 states that the provisions of Arizona Revised Statute (A.R.S.) 49–406 provide assurance that the control measures contained in the maintenance plan would be implemented. A.R.S. 49–406 provides for state assurances that emission control measure commitments in local nonattainment area plans would be fully implemented as required by Section 110(a)(2)(E) of the CAA. Since the TAPA has applied for redesignation to attainment and has submitted a maintenance plan for approval, EPA requested clarification from Arizona that the provisions of A.R.S. 49–406 apply to attainment as well as nonattainment areas. The Arizona legislature on May 29, 1998 amended A.R.S. 49–406 to include attainment as well as nonattainment areas. EPA is proposing in this notice to take final action on the TAPA request for redesignation and approval of a maintenance plan if, prior to that action, ADEQ submits a SIP revision containing A.R.S. 49–406, as amended. EPA proposes to approve the amendments to A.R.S. 49–406 if they are submitted before final action. That SIP revision, together with the Pima County SIP that was approved in 1982, will fulfill the requirement that the area have an approved 110 SIP.

b. Part D Requirements

On August 10, 1988 EPA approved Arizona's SIP for the TAPA based on the conclusion that the control measures and attainment demonstration submitted with the plan met the requirements of Section 110(a) and Part D of the CAA. See 53 FR 30220 (August 10, 1988). [2]

On November 6, 1991 the TAPA was classified by operation of law as nonattainment, not classified. See 56 FR 56716 (November 6, 1991). Before the TAPA may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D of the Act. The 1990 CAA Amendments modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas depending on the severity of the nonattainment classification. However, the Act did not specify how the requirements of subpart 1 of part D apply to "not classified" nonattainment areas for CO. EPA has interpreted the requirements for those areas in the General Preamble to Title I of the Clean Air Act Amendments of 1990. See FR 57 13535 (April 16, 1992). According to this guidance, requirements for the TAPA as a not classified nonattainment area for CO include the preparation of an emissions inventory in the SIP revision due three years from designation, adoption of New Source Review (NSR) programs meeting the requirements of section 173 as amended, and meeting the applicable monitoring requirements of section 110. The General Preamble also states that certain reasonably available control measures (RACM) beyond what may already be required in the SIP, reasonable further progress (RFP) and attainment demonstration requirements are not applicable to "not classified" CO nonattainment areas. See 57 FR 13498, (April 16, 1992).

Each of the Part D requirements pertaining to the TAPA is discussed below.

Emissions Inventory: The 172(c)(3) emissions inventory requirement has been met by the TAPA with the submission of the 1994 base year emissions inventory discussed in section 3.b. of this **Federal Register** document. The inventory includes stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO emissions using 1994 as the base year for calculations to demonstrate maintenance. For further details on the emission inventory, the reader is referred to the Technical Support Document, which is available for review at the addresses provided above.

New Source Review: Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment", EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Arizona. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. The memorandum further states that once an area has been redesignated to attainment, a part D NSR program must be replaced by the Prevention of Significant Deterioration (PSD) program. The TAPA has not relied on an NSR program for CO sources to maintain. In 1994 EPA delegated authority to Pima County to implement and enforce the Federal PSD program. See FR 49 26129 (May 19, 1994). Because the TAPA is being redesignated to attainment by this action, Pima County's PSD requirements will be applicable to new or modified major sources of CO in the TAPA.

[1] "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, director, Air Quality Management Division, September 4, 1992.

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992", Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

[2] The EPA approval was later vacated by an Order of the Ninth Circuit Court of Appeals on March 1, 1990 in Delaney v. EPA, 898 f.2d 687 (9th Cir. 1990) which directed EPA to disapprove the Arizona CO SIP and to promulgate a Federal Implementation Plan (FIP) by January 28, 1991. In response to the court order, EPA promulgated the Arizona FIP on January 28, 1991 and, at the same time, took action to restore as approved parts of the Arizona SIP, the individual control measures vacated by the Ninth Circuit in the Delaney order. EPA took final action on February 11, 1991 to disapprove only the attainment demonstration portions of the Maricopa Association of Governments (MAG) and Pima plans, rather than the individual control measures, and to promulgate a FIP for those areas. See FR 56 5459 (February 11, 1991). In May 1998 Congress passed the FY 1998 Supplemental Appropriations Bill, Public Law 105–174 (Title III, Chapter 8) which contains an amendment providing that no requirements set forth in any CO FIP that are based on the CAA as in effect prior to the 1990 amendments to such Act may be imposed in the State of Arizona.

Monitoring Requirements: Pima County operates a monitoring network that has been approved by EPA in accordance with 40 CFR part 58. The area has committed to continue to maintain that network. For a further discussion of the monitoring network, the reader is referred to Section III.4.c. below.

EPA therefore proposes to approve Arizona's SIP for the TAPA as meeting the requirements of section 110 and Part D of the 1977 Act as amended.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, EPA approved Arizona's SIP control strategy for the TAPA nonattainment area, which satisfies the requirement that the rules are permanent and enforceable. The control measures contained in the TAPA maintenance plan are currently mandated by federal and state statutes and include the Federal Motor Vehicle Control Program, the State Inspection and Maintenance program, and the State Oxyfuels program. The TAPA has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn.

4. Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

On October 6, 1995 EPA issued guidance [3] regarding a limited maintenance plan (LMP) option for nonclassifiable CO nonattainment areas. To qualify for the LMP option, the CO design value for the area, based on the 8 consecutive quarters (2 years of data) used to demonstrate attainment, must be at or below 7.65 parts per million (ppm), (85 percent of exceedance levels of the CO NAAQS). The design value is the highest of the second highest eight-hour concentrations observed at any site in the area and is the value on which the determination of attainment or nonattainment is based. Additionally, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. Based on the data for 1993 to 1995 contained in Table I of the TAPA Maintenance Plan, the design value for the TAPA is 6.5 ppm. Additionally, based on data retrieved from AIRS, there have been no exceedances of the CO standard from 1995 to the present. Since the TAPA has been classified by operation of law as nonattainment not classified, and has not exceeded the primary NAAQS standard for CO in either year for the 2-year period from 1993 through 1995, the area meets the qualifications for the LMP option.

According to EPA guidance, the LMP must contain: 1. an attainment inventory to identify a level of emissions in the area which is sufficient to attain the NAAQS, 2. provision for continued operation of an appropriate, EPA-approved air quality monitoring network in accordance with 40 CFR part 58 and verification of continued attainment, and 3. contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The maintenance demonstration requirement is considered to be satisfied for a nonclassifiable area if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (7.65 ppm or 85% of the CO NAAQS). There is no requirement to project emissions over the maintenance period. EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the monitored air quality, along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period.

With regard to conformity determinations under LMPs, there is no emissions budget requirement. Therefore the budget test for transportation conformity required in 40 CFR 93.118, 93.119, and 93.120 of the Transportation Conformity rule does not apply. Similarly, the budget test for general conformity specified in 40 CFR 93.1589(a)(5)(i)(A) of the General Conformity rule does not apply in LMP areas.

EPA is proposing to approve the State's maintenance plan for the TAPA because EPA finds that the District's submittal meets the requirements of section 175A and the guidance provided by EPA for the LMP option. Each of the requirements is discussed below:

a. Attainment Emissions Inventory

On October 6, 1997 as part of the limited maintenance plan, the State of Arizona submitted to EPA for review and approval a 1994 base year inventory of CO emissions in Pima County. The inventory concentrates only on the nonattainment portion of Pima County which comprises the TAPA. Over 90 percent of Pima County's population, business activity and air pollutant emissions are concentrated in that area. The inventory includes stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO emissions using 1994 as the base year for calculations to demonstrate maintenance. The Inventory indicates that EPA's MOBILE5 was used to estimate mobile source emissions. The inventory indicates that, on a typical winter day, total CO emissions for on-road mobile sources amounted to 261.36 tons per day or 66.77 per cent of total CO emissions for that day. Residential wood combustion and wildfires were the largest non-mobile annual source categories in 1994.

The inventory meets the requirement of the LMP that emissions inventories should represent emissions during the time period associated with the monitoring data showing attainment and should be based on actual "typical winter day" emissions of CO. EPA is proposing approval of the Pima County 1994 base year CO emission inventory. For further details on the TAPA Emissions Inventory, the reader is referred to Attachment A. of the Technical Support Document, which is available for review at the addresses provided above.

b. Demonstration of Maintenance

The LMP guidance described in Section 4 above states that the maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (7.65 ppm or 85% of the CO NAAQS). Based on the data contained in Table I of the TAPA Maintenance Plan, the design value for the TAPA is 6.5 ppm. According to the LMP guidance, there is no requirement

[3] Memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas", from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, October 6, 1995.

to project emissions over the maintenance period. EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality, along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period.

c. Monitoring Network/Verification of Continued Attainment

The LMP option requires that the maintenance plan contain provisions for continued operation of an appropriate, EPA approved air quality monitoring network, in accordance with 40 CFR part 58. The TAPA monitoring network has been approved by EPA, in accordance with 40 CFR part 58 and the area has committed to continue to maintain that network. For further details on monitoring, the reader is referred Attachment B of the Technical Support Document, which is available for review at the addresses provided above.

d. Contingency Plan

The level of CO emissions in the TAPA will largely determine the area's ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS based upon some unforeseeable condition. In order to meet this challenge, the CAA (Section 175A) requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Under the provisions of the LMP option, contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The contingency plan contained in the TAPA maintenance plan includes triggering mechanisms to determine when contingency measures are needed, the evaluation process that will be conducted, specific control measures and a schedule for implementation in the event of a future CO air quality problem.

Pre-violation Action Level: The PAG has selected two verified 8-hour average concentrations in excess of 85% of the CO NAAQS at any one monitor site in any CO season (October through March) as the pre-violation action level. If the pre-violation action level is reached at one monitor station during the CO season, PAG will review the most recent microscale modeling at known hot-spot locations and conduct field studies at hot spot locations most likely to have high CO concentrations. If the event is the result of monitored emissions from an identified hot spot, local mitigation measures will be assessed first. If local transportation system improvements at that hot-spot location can be implemented promptly, and will fully mitigate the problem, that action will be recommended to the appropriate jurisdiction by the PAG Regional Council. The local transportation system improvements are part of a Mobility Management Plan adopted by the PAG which includes a congestion mitigation strategy to implement traffic operations improvements such as the installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated traffic control systems, roadway channelization, and intersection improvement. All of the jurisdictions within the PAG have adopted resolutions containing commitments to implement appropriate transportation improvements contained in the PAG's Mobility Management Plan within their jurisdictions in accordance with the procedures set forth in the Plan. The local jurisdictions include the town of Oro Valley, Arizona (Resolution No. (R) 96–38, adopted June 5, 1996), the City of South Tucson (Resolution No. 96–16, adopted June 10, 1996), Pima County (Resolution and Order No. 1996–120, adopted June 18, 1996), the City of Tucson (Resolution No. 17319, adopted June 24, 1996), and the town of Marana, Arizona (Resolution No. 96–55, adopted June 18, 1996.

If the cause of the problem is common to a number of hot spots, or is area wide, a general control measure, i.e., increasing the oxygen content in motor vehicle fuels during the oxyfuels season (October through March) up to the practical limit will be implemented as needed to prevent future CO NAAQS violations in accordance with A.R.S. 41–2125 as amended in 1996. That statute provides for an incremental increase in the oxygen content during the oxyfuels season up to the practical limit (3.5% for 100% ethanol oxygenate, 2.7% for Methyl Tertiary Butyl Ether (MTBE) in no less than 0.3% increments). The Plan states that a monitored exceedance of the CO NAAQS (one verified ambient CO level over 9.5 ppm for an 8-hour period) at any monitor will trigger the same process described above.

In the event of a violation of the CO NAAQS, the Director of ADEQ is authorized, in accordance with provisions of A.R.S. 41–2122, as amended in 1996, to reduce the maximum volatility of gasoline sold in the Tucson vehicle emissions control area setting a maximum winter Reid Vapor Pressure (RVP) at 9 pounds per square inch (psi) with an ethanol waiver of 1 psi, or, if a violation of the CO NAAQS is recorded after the volatility requirements have been reduced to 9 psi, the Director of ADEQ shall remove the one pound psi waiver for gasoline-ethanol blends.

The 1996 amendments to A.R.S 41–2083, 41–2122 and 41–205 were submitted as SIP revisions by the TAPA on October 6, 1997, as part of its limited maintenance plan. The submittal indicated that a public hearing was held on August 20, 1997 on these amendments as well as the amendments that had been made to the 1996 LMP.

EPA in this notice is proposing to approve the amendments to A.R.S. 41–2083, 41–2122 and 41–205 as a revision to the Arizona SIP.

For a full description of the control measures and schedule of implementation, the reader is referred to the Technical Support Document which is available for review at the addresses given above.

In accordance with Section 175A (b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

IV. Proposed Action

EPA is proposing to approve the TAPA CO maintenance plan because it meets the requirements set forth in section 175A of the CAA and the requirements of the LMP option contained in EPA guidance of October 6, 1995.

In this action, EPA is proposing to approve the Emissions Inventory for the base year 1994 contained in the LMP as meeting the requirements of Section 172(c)(3) of the CAA.

EPA is also proposing to approve the amendments to State Legislation A.R.S. 41–2083, 2122, and 2125 relating to the State's oxyfuels program in Area B, the Tucson area, including standards for liquid fuels (A.R.S. 41–2083), standards for oxygenated fuel, volatility exemptions (A.R.S. 41–2122) and oxygen content in the sale of gasoline (A.R.S. 2125) as control measures in the maintenance plan to be implemented in the event of a probable or actual violation of the CO NAAQS in the

TAPA. EPA is simultaneously proposing to approve the amendments to A.R.S. 2083, 2122 and 2125, which were included as part of the LMP, following a public hearing on August 20, 1997, as a revision to the Arizona SIP.

EPA is proposing in this notice to approve Arizona's request for redesignation to attainment for the TAPA area if, prior to that action, ADEQ submits a SIP revision containing the amendments that were made to A.R.S. 49–406 providing for the inclusion of attainment areas, as well as nonattainment areas, in the legislation providing county and state assurances that emission control measure commitments in the nonattainment area plan would be fully implemented as required by Section 110(a)(2)(E) of the CAA.

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rule making procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this document.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

This proposed rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under E.O. 12866 and because it does not involve decisions on environmental health or safety risk.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA, does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve the requirements that the State is already imposing. Therefore, the Administrator certifies that the approval of the SIP revisions and redesignation will not affect a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base Agency actions concerning SIPs on such grounds. *Union Electric* Co. v. *U.S. EPA*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 13, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–19519 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156A; FRL–6017–4]

RIN 2070–AC63

Identification of Dangerous Levels of Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed rule to establish standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities under authority of TSCA section 403. The proposed rule also establishes, under authority of TSCA section 402, residential lead dust cleanup levels and amendments to dust and soil sampling requirements and, under authority of TSCA section 404, amendments to State program authorization requirements.

DATES: Written comments in response to this proposed rule must be received on or before October 1, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS-62156. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

If requested, EPA will schedule public meetings where oral comments will be heard. EPA will announce in the

Federal Register the time and place of any public meetings. Oral statements will be scheduled on a first come first serve basis by calling the telephone number listed in the Federal Register notice that announces these meetings. All statements will be made part of the public record and will be considered in the development of the final rule.

FOR FURTHER INFORMATION CONTACT: For general information contact: National Lead Information Center's Clearinghouse, 1–800–424–LEAD(5323). For technical and policy questions contact: Jonathan Jacobson, (202) 260–3779; jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 3, 1998 (63 FR 30302)(FRL–5791–9), EPA issued a proposed rule under Title IV of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2683, 2682, and 2684). Section 403 of TSCA directs EPA to promulgate regulations identifying lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Section 402 of TSCA directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program. The proposed rule provided for a 90–day public comment period. In response to requests by interested parties, EPA is extending the comment period on its proposed rule by 30 days. Comments must now be received by October 1, 1998.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: July 15, 1998.

Willliam H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–19521 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 98–11]

Availability of Records to the Public—Electronic Freedom of Information Act

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise its regulations on public access to Commission records, materials, and information in order to clarify existing rules, provide information concerning the electronic availability of information and records, and to incorporate the requirements of the Electronic Freedom of Information Act Amendments of 1996.

DATES: Submit comments on or before August 21, 1998.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Electronic Freedom of Information Act Amendments of 1996 ("EFOIA") Pub. L. 104–231, 110 Stat. 3408, provides for the availability of government records maintained in electronic form, and encourages the use of new technology to enhance public access to government information. It also provides for more time and greater flexibility in the processing of requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The Commission's rules at 46 CFR 503, subparts C and D, govern the availability of Commission records and procedures for requesting information under the FOIA. The Commission now proposes to update those subparts to reflect the changes made by EFOIA. In addition, modifications are proposed to clarify and reorganize the subparts.

Clarification and Reorganization of Subparts C and D

The proposed rule would reorganize subparts C and D. Subpart C currently identifies records that are required by FOIA to be made available for public inspection and copying, and for which a FOIA request is not required. Subpart D also contains procedures for obtaining records without resort to a FOIA request, as well as procedures for requesting records pursuant to FOIA. Under the proposed rule subpart C would concern itself with information that is made available without requiring a FOIA request, while subpart D is confined to procedures for obtaining information through a FOIA request.

The proposed rule also changes subpart and section headings where doing so is more descriptive. In various places throughout the text of the proposed rule, "the Secretary" is substituted for "the Commission" in order to specify which Commission official has responsibility for a function and should be contacted. Also added throughout the proposed rule are cross references to the Commission's fee provisions, to make the fees for a service easier to find.

Proposed Subpart C

Proposed subpart C would consist of four sections, each listing materials available and how they can be accessed.

Proposed section 503.21, *Mandatory public records*, consists of the current § 503.21, with some minor language changes and additions. Proposed § 503.21(a)(4), is new, and incorporates EFOIA's requirement that the Commission make available certain records which are potentially subject to subsequent requests and an index of such records. EFOIA's requirement that the extent of certain deletions be indicated on released records would be added in § 503.21(b). Proposed § 503.21(c) combines current §§ 503.22 and 503.23.

Proposed § 503.22 names those records available from the Secretary without prior request and relocates current § 503.31. The proposed rule would relocate and reorganize this section for ease of reading and to avoid duplication.

Proposed § 503.23 names those records generally available from the Secretary only upon prior written request and is substantively similar to current § 503.32, but adds a cross reference to applicable Commission rules regarding access to tariffs.

Proposed § 503.24, *Information available on the web site*, is new and contains a list of Commission materials found on the Commission's Internet home page. Addition of this section would effectuate one of the main stated purposes of EFOIA, i.e., to encourage the use of electronic telecommunications.

Proposed Subpart D

Proposed subpart D is renamed to read "Requests for records under the Freedom of Information Act." In addition to incorporating changes made by EFOIA, some paragraphs of subpart D are revised, reorganized, and renamed for clarification.

Proposed § 503.31 is substantively the same as current § 503.33 and describes generally the FOIA request process, but adds a provision that the Commission will make records available in any form

or format requested, if they are readily reproducible in that format.

Proposed § 503.32 tracks current section § 503.34 and describes the procedures to be followed in responding to FOIA requests. It contains the following additions:

1. Proposed paragraph (a)(1) extends to twenty (20) working days the time allowed to determine whether to grant a request, in conformity with EFOIA.

2. Proposed paragraph (a)(2) adds the requirement that notifications of denial of a request generally inform the requestor of the volume of records denied and identify those responsible for the denial.

3. Proposed paragraph (a)(3) clarifies existing language to simply allow a requestor ten (10) working days in which to appeal the denial of a request for records, rather than the current provision that provides for a reasonable time up to ten working days.

4. Proposed paragraph (b)(3) is a new provision that incorporates provisions in EFOIA that a requestor may be provided the opportunity to limit the scope of a request so that it can be processed faster.

5. Proposed paragraph (c) is also new and incorporates EFOIA provisions that allow the aggregation of separate requests that involve related matters.

6. Proposed new paragraphs (d) and (e) incorporate EFOIA provisions that allow the promulgation of regulations that provide for multitrack processing of requests and expedited processing of requests.

Proposed § 503.33, *Exceptions to the availability of records,* is current § 503.35, as modified to reflect current statutory requirements, including the addition of new paragraph (c) which is added to incorporate EFOIA's requirements that partial deletions of exempted records generally indicate the amount of information deleted on the released portion of the record.

Proposed § 503.34 sets forth new provisions governing the Commission's annual report, as required by EFOIA.

This rule is not a significant regulatory action as defined by Executive Order 12886, Regulatory Planning and Review, and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

This rule concerns internal administrative procedures for making information available to the public, and, accordingly, the Chairman certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule contains no additional information collection or record keeping requirement. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 1305 *et seq.* do not apply.

List of Subjects in 46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act. For the reasons set out in the preamble, the Commission proposes to amend 46 CFR 503 as follows:

PART 503—PUBLIC INFORMATION

1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2 (a) and (b).

2. Revise subparts C and D of Part 503 to read as follows:

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

Sec.

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, shall make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(4) Copies of all records, regardless of form or format, which have been released to any person pursuant to a Freedom of Information Act request, and which the Secretary determines have become or are likely to become the subject of subsequent requests for substantially the same records, and a general index of such records.

(b) To prevent unwarranted invasion of personal privacy, the Secretary may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in paragraph (a)(4) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on that portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in § 503.33 under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(c) The Commission maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by paragraph (a) of this section to be made available or published.

(1) The index shall be available at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor.

(2) No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless:

(i) It has been indexed and either made available or published as provided by this subpart; or

(ii) That private party shall have actual and timely notice of the terms thereof.

(d) Duplication of records may be subject to fees as prescribed in subpart E of this part.

§ 503.22 Records available at the Office of the Secretary.

(a) The following records will be made available for inspection and copying at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(1) Proposed and final rules and regulations of the Commission including general substantive rules, statements of policy and interpretations, and rules of practice and procedure.

(2) Reports of decisions (including concurring and dissenting opinions),

orders and notices in all formal proceedings.

(3) Official docket files in all formal proceedings including, but not limited to, orders, notices, pertinent correspondence, transcripts, exhibits, and briefs, except for materials which are the subject of a protective order. Copies of transcripts may only be available from the reporting company contracted by the Commission. Contact the Office of the Secretary for the name and address of this company.

(4) News releases.

(5) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.

(6) Annual reports of the Commission.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in part 514 of this chapter.

§ 503.23 Records available upon written request.

(a) The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573:

(1) Agreements filed and in effect pursuant to sections 5 and 6 of the Shipping Act of 1984.

(2) Agreements filed under section 5 of the Shipping Act of 1984 which have been noticed in the **Federal Register**.

(3) Tariffs filed under the provisions of the Shipping Act of 1984, and terminal tariffs filed pursuant to part 514 of this chapter, under the procedures set forth in § 514.20(c) or § 514.8(k).

(4) List of certifications of financial responsibility pertaining to Pub. L. 89–777.

(5) List of licensed ocean freight forwarders.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in part 514 of this chapter.

§ 503.24 Information available via the internet.

(a) The Commission maintains an internet web site. The Commission home page may be found at http://www.fmc.gov.

(b) The following general information, records, and resources are accessible through the home page:

(1) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and e-mail addresses for Commission officials, as well as locations of Area Representatives;

(2) Information about filing complaints;

(3) Commonly used forms;

(4) A public information handbook describing the types of information available from the Commission and how to access such information;

(5) A Freedom of Information Act Electronic Reading Room which contains:

(i) Copies of final decisions in adjudicatory proceedings issued since November 1, 1996;

(ii) Recently issued final rules and pending proposed rules;

(iii) Access to statements of policy and interpretations as published in 46 CFR 571; and

(iv) Records created by the Commission since November 1, 1996, and made available under § 503.21, paragraph (a)(4).

(6) Commission regulations as codified in Title 46 of the Code of Federal Regulations;

(7) News releases issued by the Commission;

(8) Statements and remarks from the Chairman and Commissioners;

(9) A connection to the Government Information Locator Service maintained by the Government Printing Office, which identifies Commission databases; and

(10) Privacy Act information.

(c) Comments or questions regarding the home page should be addressed via e-mail to webmaster@fmc.gov.

Subpart D—Requests for Records Under the Freedom of Information Act

Sec.

Subpart D—Requests for Records Under the Freedom of Information Act

§ 503.31 Records available upon written request under the Freedom of Information Act.

(a) A member of the public may request permission to inspect, copy or be provided with any Commission records not described in subpart C. Such a request must:

(1) Reasonably describe the record or records sought;

(2) Be submitted in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573; and

(3) Be clearly marked on the exterior with the letters "FOIA".

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of this subpart.

(c) In making any record available to a person under this subpart, the Secretary shall provide the record in any form or format requested by the person if the record is readily reproducible by the Secretary in that form or format.

(d) Certain fees may be assessed for processing of requests under this subpart as prescribed in subpart E of this part.

§ 503.32 Procedures for responding to requests made under the Freedom of Information Act.

(a) *Determination to grant or deny request.* Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(1) Such determination shall be made by the Secretary within twenty (20) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request, except as provided in paragraph (c) of this section.

(2) Upon granting a request the Secretary shall promptly make records available to the requestor. Upon denial of such a request the Secretary shall promptly notify the requestor of the determination, explain the reason for denial, give an estimate of the volume of matter denied, set forth the names and titles or positions of each person responsible for the denial of the request, and notify the party of its right to appeal that determination to the Chairman.

(3)(i) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal must:

(A) Be addressed to: Chairman, Federal Maritime Commission, Washington, D.C. 20573–0001; and

(B) Be filed not later than ten (10) working days following receipt of notification of denial or receipt of a part of the records requested.

(ii) The Chairman or the Chairman's specific delegate in his or her absence,

shall make a determination with respect to that appeal within twenty (20) days (excepting Saturdays, Sundays and legal public holidays) after receipt of such appeal, except as provided in paragraph (b) of this section.

(iii) If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4) regarding judicial review of such determination upholding the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(b) *Extension of time limits.* (1) In unusual circumstances, as defined in paragraph (b)(2) of this section, the time limits prescribed with respect to initial actions in response to a FOIA request or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, except as provided in paragraph (b)(3) of this section.

(2) As used in this paragraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(3) If the time limit is extended as prescribed under this section, and the request cannot be processed within the extended time limit, the Secretary shall notify the requestor, and either provide the requestor with an opportunity to limit the scope of the request so that it may be processed within the time limit, or provide the requestor an opportunity to arrange with the Secretary an alternative time frame for processing the request or a modified request.

(c) *Aggregation of requests.* Certain requests by the same requestor, or by a group of requestors acting in concert, may be aggregated:

(1) Upon the Secretary's reasonable belief that such requests actually constitute a single request, which if not aggregated would satisfy the unusual circumstances specified in paragraph (b)(2) of this section; and

(2) If the requests involve clearly related matters.

(d) *Multitrack processing of requests.* The Secretary may provide for multitrack processing of requests based on the amount of time or work involved in processing requests.

(e) *Expedited processing of requests.* (1) The Secretary will provide for expedited processing of requests for records when:

(i) The person requesting the records can demonstrate a compelling need; or

(ii) In other cases, in the Secretary's discretion.

(2) The term "compelling need" means:

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

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(3) A demonstration of compelling need by a person making a request for expedited processing must be made in the form of a statement describing the circumstances and certified by such person to be true and correct to the best of such person's knowledge and belief.

(4) The Secretary shall determine whether to provide expedited processing, and provide notice of the determination to the person making the request, within ten (10) working days after the date of the request.

(5) Appeal of the determination not to provide expedited processing should be sought in accordance with the provisions of paragraph (a)(3)(i) of § 503.32, and will be considered expeditiously.

(6) Any request granted expedited processing shall be processed as soon as practicable.

§ 503.33 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records may be withheld from disclosure:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under an Executive order.

(2) Records related solely to the internal personnel rules and practices of the Commission.

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(d) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission shall submit to the Attorney General of the United States, as required by the Attorney General, a report which shall cover the preceeding fiscal year and which shall include:

(1) The number of determinations made not to comply with requests for records made to the Commission under this subpart and the reasons for each such determination;

(2)(i) The number of appeals made by persons under § 503.32, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) A complete list of all statutes relied upon to authorize withholding of information under § 503.33(a)(3) , a description of whether a court has upheld the Commission's decision to withhold information under each such statute, and a concise description of the scope of any information withheld;

(3) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending as of that date;

(4) The number of requests for records received by the Commission and the number of requests which the Commission processed;

(5) The median number of days taken to process different types of requests;

(6) The total amount of fees collected for processing requests; and

(7) The number of full-time staff devoted to processing requests for records under this section, and total amount expended for processing such requests.

(b) Each such report shall be made available to the public at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573 and on the Commission's web site.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–19432 Filed 7–21–98; 8:45 am]

BILLING CODE 6730–01–P

Notices

Federal Register
Vol. 63, No. 140
Wednesday, July 22, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management; Proposed Information Collection, Comment Request

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Procurement and Property Management's intention to request the Office of Management and Budget approval of an information collection in support of Section 923 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act).

DATES: Comments must be received on or before September 21, 1998.

ADDRESSES: Direct all written comments to Denise Hayes, USDA, OPPM, PMD, Room 1520–S, 1400 Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Contact Kathy Fay, (202) 720–3141, USDA, Room 1522–S, 1400 Independence Avenue, SW, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Title: Uniform Procedures for the Acquisition and Transfer of Excess Personal Property under 7 U.S.C. 2206a.

OMB Number: Not yet assigned.

Expiration Date of Approval: Three years from approval date.

Type of Request: New Collection.

Frequency of Use: Annually.

Type of Affected Public: Not-for-profit institutions.

Estimated Number of Annual Responses: 100.

Estimated Total Annual Burden Hours: 100.

Estimated Average Burden Hours Per Response: ½ hour preparation x 200 requests.

Need for and Use of Information: This information collection will be used to submit USDA's annual Non-Federal Recipient Report to the General Services Administration. The additional information requested requires eligible institutions to justify need and usability for excess personal property.

W. R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 98–19463 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Actions and Considerations to Assure Year 2000 Compliance

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to clarify Rural Utilities Service (RUS) policies related to the processing of electric and telecommunications loans in light of the year 2000 problem.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC. Telephone: (202) 720–9554. Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION: Notice is given that RUS is undertaking to address with its electric and telecommunications borrowers year 2000 compliance issues that may affect the operations of RUS-financed rural electric and telecommunications systems. Year 2000 compliance means that performance and functionality of the electric and telecommunications systems, including computer software, software systems, and firmware, will not be affected by dates before, during, and after the year 2000. Because electric and telecommunications services are critical to public health and safety, electric and telecommunications providers must protect against any possible consequences of the year 2000 problem. RUS therefore has taken or will be taking the following actions:

(1) RUS has surveyed all electric and telecommunications borrowers to learn how many cooperatives and companies were prepared or preparing for the year 2000 and RUS is in the process of contacting all electric and telecommunications borrowers in a general review to help ensure that no RUS-financed electric or telecommunications systems will be affected by the date change.

(2) RUS has, by letter dated May 15, 1998, provided borrowers with a suggested provision addressing the year 2000 compliance for inclusion in specifications when purchasing new or upgraded central office switches and transmission equipment.

(3) In reviewing applications for electric and telecommunications loans, RUS is seeking assurance that the applicant has a satisfactory plan for year 2000 compliance.

(4) RUS will work closely with applicants for electric and telecommunications loans to ensure that loans necessary to ensure year 2000 compliance will be acted upon in a timely fashion.

Dated: July 16, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–19522 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South River Electric Membership Corporation; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by South River Electric Membership Corporation for financing assistance to construct a headquarters and warehouse facility in Harnett County, North Carolina. The FONSI is based on a borrower's environmental report (BER) submitted to RUS by South River Electric Membership Corporation. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with § 1794.61, RUS has adopted the BER as its environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and

Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, D.C., 20250–1571, telephone (202) 720–1784, E-mail bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The headquarters and warehouse facility is proposed to be located one mile south of Dunn on U.S. Highway 421. The facility will be located on a 35 acre tract of land owned by South River Electric Membership Corporation. The headquarters and warehouse facility will consist of a 35,000 square foot headquarters building, a 10,000 square foot warehouse building, and a 3,500 square foot administration building.

RUS considered the alternatives of no action, expanding South River Electric Membership Corporation's existing headquarters building, engineering and operations building, and warehouse located on 2.3 acres in Dunn, North Carolina. Under the no action alternative, RUS would not approve financing assistance for construction of the headquarters and warehouse facility. Since RUS believes that South River Electric Membership Corporation has a need to expand its existing headquarters building, engineering and operations building, and warehouse to alleviate overcrowded conditions, it does not consider the no action alternative to be acceptable The expansion of the existing headquarters building, engineering and operations building, and warehouse is not practicable as there is not enough space available for the needed expansion.

Copies of the BER and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Marty G. Hinson, Manager of Engineering, South River Electric Membership Corporation, P.O. Box 391, Dunn, North Carolina, 28335–0931 telephone (910) 892–8071.

Dated: July 15, 1998.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 98–19523 Filed 7–21–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Pipes and Tubes From India; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On June 16, 1998, the Department of Commerce (the Department) published the final results of administrative review of the antidumping duty order on Certain Welded Carbon Steel Pipes and Tubes from India (63 FR 32825). The period of review is May 1, 1996 through April 30, 1997. Subsequent to the publication of the final results, we received comments from the respondent alleging various ministerial errors. After analyzing the comments submitted, we are amending our final results to correct certain ministerial errors. Based on the correction of these ministerial errors, we have changed the margin for Rajinder Pipes Ltd. and Rajinder Steel, Ltd (collectively called "RSL").

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gregory Thompson or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0410/4023.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1998, the Department published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India covering the period May 1, 1996 through April 30, 1997 (63 FR 32825). After publication of our final results, we received timely allegations from RSL that we had made ministerial errors in calculating the final results.

A summary of each allegation along with the Department's response is included below. We corrected our calculations, where we agree that we made ministerial errors, in accordance with section 751(h) of the Tariff Act.

Clerical Error Allegations

Allegation 1: RSL alleges that we inadvertently miscalculated the credit expense for sales made directly from the factory. Specifically, RSL states that when calculating credit expenses for these sales, we should have included the excise duty in the gross unit price.

Department's Position: We agree and have changed the margin program accordingly. Excise taxes were included in gross unit price for all other sales. The omission of such taxes on these transactions was inadvertent.

Allegation 2: RSL alleges that the excise duties should have been deducted from the home-market prices for purpose of comparison to the U.S. prices.

Department's Position: We agree and have changed the margin program accordingly. This was an inadvertent programming error.

Allegation 3: RSL asserts that we used the incorrect level-of-trade adjustment figure. RSL states that the correct figure is the one which equates level one with level two.

Department's Position: We agree that this was an inadvertent programming error and have changed the margin program accordingly.

Allegation 4: RSL states that we inadvertently rejected its inventory carrying costs by not using them in the commission offset calculation.

Department's Position: We agree that this was an inadvertent programming error and have changed the margin program accordingly.

Amended Final Results of Review

As a result of the amended margin calculations, the following weighted-average percentage margin exists for the period May 1, 1996, through April 30, 1997:

Manufacturer/Exporter	Percentage Margin
RSL	29.81

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated, wherever possible, an exporter/importer-specific assessment rate for RSL's sales to the United States. We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (63 FR 32825, 32833) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(h) and 777(i) of the Tariff Act and 19 CFR 353.28(c).

Dated: July 15, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–19525 Filed 7–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980716181–8181–01]

Cooperative Agreement Program for American Business Centers in Russia and the New Independent States

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The International Trade Administration (ITA) is soliciting competitive applications to establish and operate an American Business Center (ABC) in the city of Khabarovsk, Russia for a two (2) year multi-year award period. The ABC will encourage the export of U.S. goods and services and stimulate trade and investment in the Khabarovsk, Russia region. The award resulting from this announcement is contingent upon the availability of appropriated funds.

The ABC will provide, on a user fee basis, a broad range of business development and facilitation services to United States companies in the Khabarovsk, Russia region. Services provided by the ABC will be designed to encourage more U.S. firms to explore opportunities for trade and investment in the Khabarovsk, Russia region and to help them conduct business there more effectively. The core services to be provided by the ABC include: international telephone, fax, and data transmission; temporary office space; space for meetings, small seminars, and small product exhibitions or demonstrations; secretarial support (e.g. word processing, typing, message taking); translator/interpreters; photocopying; market research; counseling on local business conditions; and arranging appointments with Russian business contacts. The Center also will work closely with Russian businesses to help them become more attractive trading partners; identify and report obstacles to trade and investment; and serve as a link between financial institutions, U.S. companies, and Russian enterprises.

In addition to these core services, the ABC will support U.S. Government activities under the Regional Investment Initiative (RII). This will include providing, at cost, support for the activities of the RII coordinator. Such support may include office space, computers, telecommunications equipment and secretarial and translation services.

DATES: ITA will accept only those applications which are received at the U.S. Department of Commerce, Room 1235, HCHB, no later than 3:00 pm E.S.T. August 21, 1998. Late applications will not be accepted and will not be considered. On July 27, 1998 competitive application kits will be available from the Department of Commerce.

ADDRESSES: To obtain a copy of the application kit, please send a written request with a self-addressed mail label to: Russia-NIS Program Office, U.S. & Foreign Commercial Service, Room 1235, HCHB, U.S. Department of Commerce, Washington, D.C. 20230. Requests for application kits also may be faxed to 202–482–2456. Only one application kit will be provided to each organization requesting it, but the kit may be reproduced by the requester. All forms necessary to submit an application will be included in the application kit The kit will include Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs, and 424B, Assurances—Non-Construction Programs, Rev 4–88). Completed applications should be returned to the same address. Applicants must submit a signed original and two copies of the application and supporting materials. It is anticipated that it will take ten weeks after the deadline for receipt of applications to process applications and make awards.

FOR FURTHER INFORMATION CONTACT: Applicants wishing further information should contact Douglas Barry, Russia-NIS Program Office, U.S. & Foreign Commercial Service, U.S. Department of Commerce, room 1235, HCHB, Washington, D.C. 20230, telephone: (202) 482–2902, or Fax: (202) 482–2456.

SUPPLEMENTARY INFORMATION:

Program Authority

The American Business Center program is authorized by Title III of the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992" or the "FREEDOM Support Act", Pub. L. 102–511. Funding for the program is provided by the Agency for International Development under Section 632(a) of the Foreign Assistance Act of 1961, as amended.

Eligible Applicants

United States for-profit firms, non-profit organizations, non-Federal government agencies, industry and trade associations, and educational institutions are eligible to apply. An enterprise which includes or intends to include participation of host country citizens or entities will be considered an eligible applicant so long as the applicant is and will remain, throughout the award period, controlled and managed by citizens and/or entities of the United States.

Funding Guidelines

Since it is anticipated that ITA will be involved in the implementation of the project for which an award is made, the funding instrument for the program will be a cooperative agreement. Examples of ITA involvement include but are not limited to the following: supplemental marketing to promote the ABC, guidance on eligibility of ABC clients, and coordination with other U.S. government assistance programs.

ITA anticipates $320,000 will be available for the first year of funding for one (1) multi-year cooperative agreement award during FY 1999. Applicants will be requested to submit a work-plan and budget which cover a one (1) year period for a total amount of not more than $320,000 in Federal funds. Applicants must supply at least twenty-percent (20%) of total project costs, with the Federal portion of total project costs to be no more than eighty-percent (80%). A minimum of one half (½) of the support supplied by the applicant must be in the form of cash.

The remaining portion of the applicant's support may consist of cash or in-kind contributions (goods and services contributed by a third party). Applicants will be requested to submit a work-plan and budget for a second year of operation based on the level of funding for the first year with the understanding that funding levels may or may not be the same as the first year.

Applicant receipt of future funding is contingent upon the availability of appropriated funds, and satisfactory performance, and will be at the sole discretion of ITA. Publication of this notice does not constitute an obligation by the Department of Commerce to enter into a cooperative agreement with any responding applicant.

Evaluation Criteria

Consideration for financial assistance under the program will be based on the following evaluation criteria:

(1) Quality of Work Plan: core commercial activities, marketing strategy, management/staffing, cooperation with ITA and outreach programs to NIS firms;

(2) Qualifications of Applicant: financial history, personnel's experience in region and in delivering commercial products/services;

(3) Market Knowledge of Locations: applicant's demonstrated familiarity with the market conditions in the proposed city and/or region;

(4) Project Timetable: ability of applicant to complete major stages in the scope of work quickly, particularly bringing an ABC into the fully-operational stage;

(5) U.S. Small Business Utility: accessibility of services to small firms and reasonableness of fees;

(6) *Cost-Effectiveness:* reasonableness, allowability and allocability of costs.

For purpose of evaluation of the applications, the above criteria will be weighted as follows: criterion (1) will be worth a maximum of 30 (thirty) percent; criterion (2) will be worth a maximum of 30 (thirty) percent; criterion (3) will be worth a maximum of 20 (twenty) percent; criterion (4) will be worth a maximum of 10 (ten) percent; criterion (5) and (6) will be worth a maximum of 5 (five) percent each.

Selection Procedure

Each application will be evaluated by a panel of at least three independent reviewers qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the evaluation criteria set forth above. The award will be based on the highest total accumulated score.

Notifications

All applicants are advised of the following:

(1) Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(2) If applicants incur any cost prior to an award being made, they do so solely at their own risk of not being reimbursed by the Federal Government. Notwithstanding any verbal assurance that they may receive, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(3) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(4) No award of Federal funds shall be made to an applicant who has an outstanding debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

(5) All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F "Government wide Requirement for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions;" and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more that $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater". Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28. Appendix B.

(6) Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction and Lobbying" and disclosure form, SF–LLL,'Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be submitted by any tier recipient or sub-recipient should be submitted to the Department of Commerce in accordance with instructions contained in the award document.

(7) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(8) All recipients and sub-recipients are subject to all applicable Federal laws and Federal Department of Commerce policies, regulations, and procedures applicable to Federal assistance awards. For-profit organizations shall be subject to OMB Circular A–110.

(9) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(10) Recipients are subject to the Fly America Act (49 U.S.C. 1517 as implemented by 41 CFR 301–3.6).

(11) Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

(12) The Paperwork Reduction Act does apply to this program. This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget under OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. 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 current valid OMB control number.

(13) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

The Catalog of Federal Domestic Assistance number is 11.115.

Dated: July 20, 1998.

E. Vivian Spathopoulos,

Deputy Director, US&FCS/Russia—NIS Program Office.

[FR Doc. 98–19620 Filed 7–21–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071598E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: This meeting will begin at 8:30 a.m. on Tuesday, August 4 and conclude by 12:00 noon on Thursday, August 6, 1998.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Reef Fish Stock Assessment Panel members will meet to review the NMFS Gulf of Mexico gag stock assessment that was prepared in October 1997. The RFSAP conducted a preliminary review of this assessment in October 1997, but was unable to complete the review due to insufficient time.

The RFSAP will also review a new Gulf of Mexico vermilion snapper stock assessment by NMFS, and will recommend a range of allowable biological catch (ABC) to prevent overfishing from occurring. Vermilion snapper in the Gulf of Mexico were identified by NMFS in its September 1997 Report to Congress on the Status of Fisheries of the United States as a stock that is approaching an overfished condition. A stock is considered to be approaching an overfished condition if, based on trends in fishing effort, fishery resource size, and other appropriate factors, NMFS estimates that the fishery will become overfished within two years. As a result of this designation, the Council is required to take action within one year to prevent overfishing from occurring in the fishery.

In addition to reviewing the stock assessments, the RFSAP may review overfishing definitions and proxies for maximum sustainable yield (MSY) for gag and vermilion snapper, as required under the Sustainable Fisheries Act of 1996.

Copies of the agenda can be obtained by calling 813–228–2815.

Although other issues not contained in this agenda may come before the Panel/Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 28, 1998.

Dated: July 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–19512 Filed 7–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service; Notice of Opportunity for Public Comment on the Strategic Network Plan

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment on the Strategic Network Plan.

SUMMARY: The NWS is announcing its interest in obtaining public comments on its future networking plans.

DATES: Comments will be accepted until September 21, 1998.

ADDRESSES: Requests for a copy of the Strategic Network Plan should be made via the Internet at: http://www.nws.noaa.gov/snp. The following is the sequence of steps: access the Internet at the above address; register your organization as directed at the Internet site; receive a password from the NWS; review the Strategic Network Plan; submit your comments via the Internet to michael.sikorski@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Michael T. Sikorski at 301–713–1737x221.

SUPPLEMENTARY INFORMATION: The Office of Systems Operations of the NWS has recently completed a review of existing and planned NWS data communication networks and current and anticipated data distribution requirements and has developed a preliminary strategy for accomplishing future integration of these networks, including the central collection of radar data. The NWS is interested in obtaining outside comments on its networking plans for the future. Accordingly, interested parties are invited to review preliminary NWS plans and offer their views and suggestions on future networking directions that the NWS should consider.

Dated: July 16, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98–19543 Filed 7–21–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071498B]

Marine Mammals

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Dan Engelhaupt, 9195 Jamaica Beach, Galveston, TX 77554, has applied in due form for a permit to take several species of cetaceans for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 21, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant seeks authorization to conduct photo-identification and skin biopsy sampling activities on up to: 250 sperm whales (*Physeter macrocephalus*); 150 Pantropical spotted dolphins (*Stenella attenuata*); 150 melon-headed whales (*Peponocephala electra*); and 30 individuals of each of the following species: Bryde's whales (*Balaenoptera edeni*), minke whales (*Balaenoptera acutorostrata*), rough-toothed dolphins (*Steno bredanensis*), Fraser's dolphins (*Lagenodelphis hosei*), killer whales (*Orcinus orca*), pygmy killer whales (*Feresa attenuata*), dwarf sperm whales (*Kogia simus*), pygmy sperm whales (*Kogia breviceps*), Risso's dolphins (*Grampus griseus*), Cuvier's beaked whales (*Ziphius cavirostris*), Blainville's beaked whales (*Mesoplodon densirostris*), Gervais' beaked whales (*Mesoplodon europaeus*), short-finned pilot whales (*Globicephala macrorhynchus*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), Clymene dolphins (*Stenella clymene*), false killer whales (*Pseudorca crassidens*), bottlenose dolphins (*Tursiops truncatus*), and Atlantic spotted dolphins (*Stenella frontalis*). Samples collected via the above biopsy dart sampling as well as extant samples of stored material obtained from National Marine Fisheries Services' Southeast Region would be exported to England for genetic analyses. The focus of the proposed study is to compare genotypic and phenotypic variability within and between cetacean populations in the Gulf of Mexico, and would be conducted over a 5-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 15, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–19513 Filed 7–21–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, July 29, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Options for Multi-Purpose (Utility) Lighters

The staff will brief the Commission on a draft notice of proposed rulemaking for multi-purpose lighters (also known as utility lighters) to address the hazard of fires started by young children who operate such lighters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 20, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–19706 Filed 7–20–98; 3:10 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

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: Associated Form, and OMB Number: Application for Training Leading to Commission in the United States Air Force; AF Form 56; P<B Number 0701–0001.

Type of Request: Reinstatement.

Number of Respondents: 2,900.

Responses Per Respondent: 1.

Annual Responses: 2,900.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 967.

Needs and Uses: The information collection requirement is necessary for providing information to determine if applicant meets qualifications established for training leading to a commission. Air Force selection boards use the information to determine suitability for officer training. Information contained on AF Form 56 supports the Air Force as it applies to officer training (procurement) programs for civilian and military applicants. It is imperative that only persons fully qualified for receipt of Air Force commissions are selected for the training leading to commissioning. Data supports the Air Force in verifying the eligibility of applicants and in the selection of those best qualified for dedication of funding and training resources. Eligibility requirements are outlined in Air Force Instruction 36–2013, "Officer Training School (OTS) and Airman Commissioning Programs."

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–19494 Filed 7–21–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: An air distribution connector valve and a fin leading edge protector.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in an non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Butterfly Actuated Quick Coupling Connector Valve.

Inventor: Jim A. Faughn.

Patent Number: 5,738,143.

Issued Date: April 14, 1998.

Title: Kinetic Energy Projectile with Fin Leading Edge Protection Mechanisms.

Inventor: Ameer G. Mikhail.

Patent Number: 5,744,748.

Issued Date: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5055, tel: (410) 278–5028; fax (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–19479 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive Licensing of U.S. Patent No. 5,618,011 for the Load Securing and Releasing System

AGENCY: U.S. Army Soldier Systems Command.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of a prospective exclusive license of a load securing and releasing system described in U.S. Patent No. 5,618,011, issued on April 8, 1997.

DATES: Written objections must be filed on or before 21 September 1998.

ADDRESSES: U.S. Army Soldier Systems Command, Office of Chief Counsel, Attn: Patent Counsel, Kansas Street, Natick, Massachusetts 01760–5035.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent J. Ranucci, Patent Counsel at 508–233–4510 or Ms. Jessica M. Niro, Paralegal Specialist at 508–233–4513.

SUPPLEMENTARY INFORMATION: The Load Securing and Releasing System was invented by Messrs. James Sadeck, Gary F. Vincens and Donald Billoni. Rights to this invention are vested in the U.S. Government as represented by the U.S. Army Soldier Systems Command (SSCOM). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92–502) and section 207 of Title 35, U.S. Code, the Department of the Army as represented by SSCOM intends to grant an exclusive license on the load securing and releasing system to New England Ropes, Inc., 848 Airport Road, Fall River, Massachusetts 02720.

Pursuant to 37 CFR 404.7(a)(1), any interested party may file written objections to this prospective license arrangement. Written objections should be directed to the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–19477 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal From Preparation of a Draft Environmental Impact Statement, Environmental Restoration, Jackson Hole, Wyoming

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Walla Walla District, is withdrawing its intent to prepare a Draft Environmental Impact Statement (DEIS) for Environmental Impact Statement (DEIS) for Environmental Restoration in the Snake River at Jackson Hole, Wyoming. The Corps environmental analyses have not identified any significant impacts associated with the proposed action, therefore, intent to prepare a DEIS is hereby terminated. The Corps is preparing an Environmental Assessment (EA) for the proposed environmental restoration. The EA will evaluate environmental effects of restoring riverine, wetland, and riparian habitat for four sites within the active Snake River channel between Grand Teton National Park and the South Park Elk Feed Grounds in Jackson Hole, Wyoming. Teton County and the Teton County Natural Resources District are cost sharing sponsors and participating in the project and in developing the EA. The objective of this project is to provide site specific restoration measures for impacts of construction, operation, and maintenance of levees constructed under the Jackson Hole Flood Protection Project. Formulation of the restoration measures focuses on examining existing conditions and determining the feasibility of restoring portions of degraded ecosystem structure, function, and dynamic processes to a less degraded condition.

FOR FURTHER INFORMATION CONTACT: Please Contact Mr. Bill MacDonald, Project Manager, Walla Walla District, Corps of Engineers, CENWW–PD–PM,. 201 North Third Avenue, Walla Walla, WA. 99362, phone 509–527–7253 or Mr. James S. Smith, NEPA Coordinator, Walla Walla District, Corps of Engineers, CENWW–PD–EC, 201 North

Third Avenue, Walla Walla, WA. 99362, phone 509–527–7266.

SUPPLEMENTARY INFORMATION: A reconnaissance study completed in June 1993, by the U.S. Army Corps of Engineers, Walla Walla District recommended a feasibility level study to evaluate the feasibility of completing the levee system and restoring fish and wildlife resources. The study area included the levee system and adjacent lands affected by the project, within the 500-year flood plain along a 25 mile reach of the Snake River. To reduce the cost of the feasibility study, the scope of the study was reduced to determining the feasibility of providing environmental restoration on four priority sites exhibiting the greatest potential for restoration. Based on the reduced scope, environmental impacts of the proposed project will be documented in an EA.

Alternatives: Alternatives that could be implemented at the four sites include:

a. Channel restoration to rehabilitate fisheries.

b. Island protection measures to preserve riparian island values.

c. Island restoration measures to restore riparian island values.

d. Fish habitat creation through stream structure alteration.

e. No action.

Public Meeting: A public information meeting for the EA will be held in Jackson, Wyoming in January 1999. Date, time and location will be publicized.

Availability: The Draft EA should be available in December 19993.

Donald R. Curtis, Jr.,

LTC, EN Commanding.

[FR Doc. 98–19480 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–GC–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare an Environmental Impact Statement (EIS) for the Wichita River Basin Portion of the Red River Chloride Control Project (RRCCP), Texas and Oklahoma

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of the EIS is to address alternatives and modifications to the authorized plan for chloride control in the Wichita River Basin to provide improved water quality at Lake Kemp, Texas.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. David L. Combs, Chief, Environmental Analysis and Compliance Branch, Tulsa District, U.S. Army Corps of Engineers, P.O. Box 61, Tulsa, Oklahoma 74121–0061, telephone 918–669–7188.

SUPPLEMENTARY INFORMATION: The Wichita River Basin portion was authorized as part of a larger chloride control project by the Flood Control Act of 1966, approved 7 November 1966, Public Law 89–789, SD 110; as modified by the Flood Control Act approved 31 December 1970, Public Law 91–611; and as amended by the Water Resources Development Acts of 1974 (Public Law 93–251) and 1976 (Public Law 94—587). Section 1107 of the Water Resources Development Act of 1986 amended the above authorization to separate the overall project into the Arkansas River Basin and the Red River Basin and authorized the Red River Basin for construction subject to a favorable report by a review panel on the performance of Area VIII. The review panel submitted a favorable report to the Public Works Committee of the House and Senate in August 1988 indicating that Area VIII was performing as designed. The portion of the authorized project on the upstream forks of the Wichita River consists of collection Areas VII, VIII, and X and Truscott Lake. The authorized plan consisted of four low flow dams for collection of brine-laden waters, two brine storage lakes for holding concentrated brine solutions, and the necessary pumps and pipelines to transport brine solutions from the low flow dams to the brine storage lakes.

Facilities constructed to date include the Areas VIII and X low flow collection facilities, Truscott Brine Lake, and a pipeline from the Area VIII collection facility to the Truscott Brine Lake. Approximately 10,000 acres of lands have also been purchased at the Crowell Brine Lake site near Crowell, Texas. The Crowell Brine Lake component will not be constructed, but the lands will be used for fish and wildlife mitigation requirements associated with completion of the Wichita River Basin facilities. The EIS will evaluate the impacts associated with construction and operation of *only* the Wichita River Basin chloride control facilities.

Reasonable alternatives to be considered include various combinations of constructed facilities in combination with plans for deep well injection, construction of the Area VII collection facility, abandonment of the Area X collection facility, an increase in the size of Truscott Brine Lake, and no action.

Significant issues to be addressed in the EIS include: (1) hydrological, biological, and water quality issues concerning fish, aquatic invertebrates, algae/biofilm, aquatic macrophytes, wetland/riparian ecosystem of the Wichita River, Lake Kemp, and Red River above Lake Texoma to the confluence of the Wichita River; (2) the Lakes Kemp and Texoma components, including chloride/turbidity relationships, chloride/fish reproduction issues, chloride/plankton community issues, chloride/nutrient dynamics issues, and impacts on recreational values; (3) a selenium (Se) component addressing Se concentrations and impacts on biota; (4) alternative studies involving constructed facilities and remaining facilities to be constructed; (5) man-made brines and associated reduction (6) mitigation as it relates indirectly to habitat losses resulting from irrigated cropland and direct impacts resulting from construction of project components; (7) Section 401 water quality issues; (8) impacts on the commercial bait-fishery of the upper Red River; (9) Federally-listed threatened and endangered species; and (10) unquantifiable/undefined impacts.

Scoping meetings for the project are planned to be conducted in August 1998. News releases, informing the public and local, state,and Federal agencies of the proposed action will be published in local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Tulsa District in identifying potential impacts to the quality of the human or natural environment. Affected Federal, state, or local agencies, affected Indian tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address or attending the Scoping meetings.

The draft EIS (DEIS) is expected to be available for public review and comment by 1 August 1999. Any comments and suggestions should be forwarded to the above noted address no later than 1 October 1999 to be considered in the DEIS.

Timothy L. Sanford,

Colonel, U.S. Army, District Engineer.

[FR Doc. 98–19478 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Notice Concerning Changes to Nationwide Permit 26

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final notification.

SUMMARY: In the November 26, 1997, **Federal Register**, the U.S. Army Corps of Engineers requested comments on three changes that were made to nationwide permit (NWP) 26 and published in the December 13, 1996, **Federal Register**. This was done in response to a court order issued on October 27, 1997. The Corps requested comments on the following three changes to NWP 26: (1) The expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States.

The Corps of Engineers is giving final notice that NWP 26 is being retained as published in the **Federal Register** on Friday, December 13, 1996 (61 FR 65874–65922) with one exception. The Corps has proposed to extend the expiration date of NWP 26 to March 28, 1998 (63 FR 36040–36078).

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Write to the Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW–OR, Washington, D.C. 20314–1000, or, contact Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0199.

SUPPLEMENTARY INFORMATION:

Background

In the June 17, 1996 (61 FR 30780), **Federal Register**, the U.S. Army Corps of Engineers published a notice requesting comments on the issuance, reissuance and modification of the Corps of Engineers nationwide permits (NWPs) and announced a public hearing to invite the public to provide comments on the NWPs. In that notice, the Corps proposed changes to several NWPs including several changes to NWP 26. However, it did not specifically request comments on limiting the filling or excavation of stream beds to no more than 500 linear feet, restricting the use of other NWPs with NWP 26 to limit adverse effects to waters of the United States to 3 acres for a single and complete project, or issuing NWP 26 for a period shorter than 5 years, which is the legal maximum limit for any NWP in accordance with Section 404(e) of the Clean Water Act.

In response to the June 17, 1996, **Federal Register** Notice, the Corps received over 500 comments concerning NWP 26. Based on comments from the public and other agencies, as well as the Corps internal review of the implementation of NWP 26 over the past five years, several changes were made to NWP 26 to ensure that it would comply with the legal requirements of the Clean Water Act. The changes were published in the **Federal Register** on December 13, 1996 (61 FR 65874–65922) and became effective on February 11, 1997. On March 6, 1997, a lawsuit was filed by the National Association of Home Builders, objecting to the three changes noted above.

The Corps believes that the changes made to NWP 26 were promulgated in full compliance with all legal requirements of the Clean Water Act. However, in view of the public interest in the changes and to avoid the time and expense of litigation, the Corps volunteered to seek comments on the three changes. Accordingly, on October 27, 1997, a court order was issued remanding the action to the Corps to request public comments on the three changes to NWP 26 described above.

The November 26, 1997 (62 FR 63224), **Federal Register** notice was published and comments were accepted until February 26, 1998.

Summary of Comments

Over 3,000 comments were received. Approximately 2,700 were in favor of the three changes and approximately 300 were against them. Approximately two thirds of the commenters specifically addressed the three changes to indicate their approval or disapproval while others simply expressed favor or disfavor towards NWP 26 in general. Of those specifically addressing each change, all, except a very few (less than 10) indicated that they either favored or disfavored all three of the changes, (i.e., very few had split opinions about the changes).

Of those in favor of the changes, 190 represented environmental, civic, lake or watershed districts or other organizations or state agencies. Many individual commenters stated that they were members of the National Wildlife Federation or of the Ohio Bass Federation. Of those opposed to the changes, approximately 244 represented groups that are members of the National Association of Home Builders and other building, design, realty, or mining organizations.

Response to Specific Comments

I. General

A. Compliance With Section 404(e) of the Clean Water Act (Section 404(e))

Most of the commenters opposed to the changes stated that the three changes are contrary to Section 404(e). They believe Section 404(e) indicates that it was the intent of Congress for the Corps to develop and maintain a streamlined regulatory process for projects that have minimal adverse effects. However, many of the commenters that support the changes stated that, in its earlier form, NWP 26 was contrary to CWA 404(e). Section 404(e), in its entirety, reads:

(e)(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary [of the Army] may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidance described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

While the Corps agrees that a streamlined process is essential for both the public and the agency, Section 404(e) does not guarantee a particular form of streamlined process. Section 404(e) sets forth two important terms: "minimal adverse effects" and "similar in nature", but does not define either. During the past twenty years there have been many changes that affect how we interpret them. There have been advancements in our understanding of the functions of aquatic resources, including wetlands, and changes in the types of projects that are most common.

Neither wetland science nor wetland regulation are static disciplines.

NWP 26 was first developed in 1977, when the Corps Section 404 jurisdiction was extended from traditional navigable waters to all waters of the U.S. At that time, the blanket authorization of work above headwaters and in isolated waters, with discretionary authority to revoke or modify specific activities, was a practical means of managing the suddenly increased workload. Later, in 1984, when it had become apparent that very large tracts of waters of the U.S. could be impacted, NWP 26 was capped at 10 acres. Since that time, it has become evident that headwaters and isolated waters of the U.S., including wetlands, have greater values and functions in support of the overall aquatic ecosystem than previously recognized. This was addressed by the National Academy of Sciences in their 1995 report: *Wetlands: Characteristics and Boundaries.* It has also become apparent that, in some watersheds, urban developments that individually impact ten or less acres of wetlands, can cumulatively have adverse effects on water storage and water purification capacity. Given these changes in our knowledge base and in the types of projects that NWP 26 is being used for, the Corps believes that reducing the NWP 26 cap to 3 acres is warranted if we are to assure that only minimal adverse effects on the aquatic environment are resulting from its application.

The term "similar in nature" has been the subject of much discussion and controversy. Some, particularly those opposed to changes to NWP 26, believe it means activities that are similar to each other by virtue of the fact that they are fill activities and they all have minimal adverse effects. Others, including many of those who support the changes made to NWP 26, believe it has a much narrower meaning: projects for the same purpose conducted in a similar manner such as fill for a road, fill for an individual residence, fill in support of cranberry operations, etc. In addition, it has been posed that similar may refer to the size of the area impacted, e.g. fill up to ⅓ acre, fill up to 2 acres, etc., independent of purpose.

Some of the commenters opposed to the changes suggested that since the 500-foot and 3-acre limitations have been placed on NWP 26 to assure that it will not result in more than minimal adverse effects, it should no longer be necessary to phase it out altogether.

The Corps sees several advantages in moving to a new set of activity-specific NWPs. It will remove the question as to whether an NWP is authorizing activities that are similar in nature. It will allow us to tailor special conditions to similar types of activities, rather than "one size fits all". It will also facilitate regionalization of the NWPs to best protect the valuable resources found in each district while maintaining the Corps ability to expeditiously authorize activities with minimal effects on the aquatic environment. (For additional discussion of "minimal adverse effect" and "similar in nature", see the preamble to the NWPs published in the **Federal Register** on December 13, 1996.)

B. Workload

Almost all the commenters who were opposed to the changes expressed concern about how the Corps workload would be affected and, therefore, the Corps ability to respond to applicants in a reasonable amount of time. In December, 1996, the Corps estimated that the changes to NWP 26 (that became effective February 11, 1997) would result in approximately 7,500 additional pre-construction notifications (PCNs) each year. However, data indicated that most would be for 1 acre or less of fill and therefore would be Corps-only PCNs. In addition, it was estimated that there would be a 10% increase in the annual number of individual permits (IPs). It is not possible to look at data since February, 1997, and determine if those estimates were accurate because the change in the total number of PCNs and of IPs has been influenced by several factors, not known in December, 1996, rather than just the changes made to NWP 26. For example: The "Tulloch rule" (regulation of discharges incidental to excavation) was suspended for approximately 6 months during Fiscal Year (FY) 1997; several districts implemented new regional general permits during the same period; some applicants deferred work in order to understand the new NWPs; etc. We do know that the total number of IPs was lower, rather than higher, in FY 1997 (after the changes) than in FY 1996 (before the changes):

FY 1996: 5,040 IPs, 38,476 written NWP authorizations

FY 1997: 4,697 IPs 39,883 written NWP authorizations

C. Complex Regulatory System

Commenters opposed to the changes stated that these changes are part of a trend towards more complicated regulations. The Corps recognizes that this is occurring. It is a result of continuing work to fine-tune the NWPs so that, frequently-occurring, minimal adverse effect activities are expeditiously permitted, while activities that may have more than minimal adverse effects are more carefully scrutinized. It is also a result of applying permit terms and conditions that are specific to similar activities rather than "one size fits all".

D. Was This a Good Faith Notice?

Some of the commenters opposed to the changes stated that they believe the Corps requested comments on these three changes merely to avoid litigation and had no intention of seriously considering them. The Corps believes that the changes were promulgated in compliance with all legal requirements and, after review of the comments received, has concluded that a retraction of the changes is not warranted. However, all the comments received were carefully considered and we have obtained additional valuable information about the public's concerns and highlighted areas where we need to be more clear or provide more detail about the intent of NWPs and/or the special conditions that apply to them. This will be reflected in the proposed NWPs we are developing to go into effect when NWP 26 expires. The proposed NWPs were described in the July 1, 1998, FR (63 **Federal Register** 36040–36078).

E. The Corps Does Not Have a Good Tracking System

Many of the commenters who support the changes stated that the true impacts of NWP 26 cannot be ascertained because the Corps does not have an effective way to track them. The Corps has collected and reviewed data for all permit authorizations for many years to assist in making program-wide determinations and NWP decisions in particular. Data gathering has become progressively more sophisticated as additional districts become automated. Since May, 1997, we have collected additional data for all NWPs, and specifically for NWP 26, to ensure that we have a good understanding of where it is being used, how often, and for what types of projects.

F. NWP 26 Allows Fill for Development Without Regulatory Review, Analysis of Alternatives, Public Notification or Opportunity for Public Comment

It is the purpose of the nationwide permit program to streamline review of, and decisions for, proposed projects. To that end, alternatives analysis, public notification and opportunity for public comment take place at the time the NWPs are issued, i.e., usually every five years. Activities authorized by NWP 26 requiring a PCN are reviewed by the Corps and evaluated for potential impacts to particularly sensitive

resources, on-site avoidance and minimization of impacts, and compliance with general and special conditions. When the Corps receives a PCN, it can take discretionary authority to require an individual permit, if the Corps believes a more detailed evaluation is required. In practice, even those activities not requiring a PCN are often reviewed in the same manner as those that require it. In some cases, the applicant requests a review; in others, the initial proposed project requires a PCN but is subsequently reduced in scope. Moreover, the Corps believes that NWPs with regional conditions protect the aquatic environment by motivating applicants to reduce impacts to the extent practicable in order to receive a quick decision.

II. Expiration of NWP 26 on December 13, 1998

A. Why Set an Expiration Date?

Many commenters opposed to the changes asked why it is necessary to set an expiration date for NWP 26. They recommended that it be left in effect until the replacement NWPs are ready. They doubted the Corps ability to have new NWPs ready by December 13, 1998, and wanted to avoid a period of time with neither in effect. The Corps believes it is important to set a date not only as a goal for the Corps to conclude the process, but for applicants' ability to make plans. However, the coordination process to develop new and modified NWPs has taken longer than expected resulting in delay in the date of publication of the proposed new and modified nationwide permits. The Corps wants to ensure that there is adequate time to effectively involve other agencies and the public in a new regional conditioning process. Therefore, concurrent with the Corps July 1, 1998, publication in the **Federal Register**, the Corps proposed extension of the expiration date of NWP 26 to March 28, 1999. Comments on this matter will be received until July 31, 1998, after which the Corps will make a decision on whether to extend the expiration date for NWP 26.

B. Decreased Flexibility and Predictability; Loss of "Catch-all" NWP

Many commenters opposed to the changes believe that they will result in decreased flexibility and predictability. In the short term, there may be reduced predictability as applicants and agencies transition to a new set of NWPs. It is the Corps goal to increase consistency and predictability, as well as prioritizing efforts based on aquatic functions and values, by removing the artificial distinction that currently exists between headwaters and isolated waters versus other waters of the United States. There can be a very different level of review for similar projects depending on which type of water they are located in. This change will provide for a similar process for similar activities regardless of whether they are located above or below the headwaters point.

Some commenters referred to loss of "permit certainty". It should be noted that existence of an NWP is not a guarantee that a permit will be issued. The project will be evaluated and if appropriate conditions are met, authorization can be granted in a streamlined manner. The Corps believes that most projects that now qualify for an NWP will continue to qualify for an NWP after NWP 26 expires, although the specific form of the NWP may change and there may be additional conditions related to the specific type of activity.

The Corps has gathered information from all its district offices about the types of projects that NWP 26 is used to authorize and most will be addressed by the new NWPs. Project types that occur frequently only in a given region, and have only minimal adverse effects, may be more appropriately addressed by regional general permits issued by individual Corps districts.

C. Burden on Transportation Projects

Several commenters from transportation agencies and from consultants who work with them stated that the 2-year expiration of NWP 26 would be particularly burdensome for transportation projects. They stated that transportation agencies often work on a 5-year, or longer, plan and need to know what the regulatory framework will be over that length of time. They also stated they would have increased costs because they would not be able to review the new NWPs in time to design their projects to meet new conditions and also meet advertisement and contracting schedules. The NWP regulations at 33 CFR 330.6(b) state that "activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within twelve months of the date of an NWP's expiration, modification or revocation". For most projects, a year is sufficient time for project completion, however, if it is determined that particular transportation projects need a longer transition period, this can be addressed by Corps Districts on a case-by-case basis through expedited review as individual permits. However, as noted above, we believe that, in most cases, projects that now qualify for NWP 26, will continue to qualify for an NWP after NWP 26 expires, although the specific form and conditions of the NWP may change.

D. Regulation of Isolated Wetlands

Several of the commenters who were concerned about the expiration of NWP 26 referred to a December 23, 1997, decision of the U.S. Court of Appeals for the Fourth District regarding Section 404 jurisdiction over isolated waters. They requested that the expiration of NWP 26 be delayed until the issue of regulation of isolated wetlands is resolved. That decision, in the case of *United States* v. *Wilson*, 133 F.3d 251 (4th Cir. 1997) pertains to how a link is established between isolated water bodies and interstate or foreign commerce. The ultimate impact of that decision, if any, on Section 404 jurisdiction will occur independently of the existence of NWP 26 or other NWPs. The expiration of NWP 26 will not change the Corps jurisdiction in isolated waters, but rather when the Corps evaluates and authorizes projects in such waters.

E. Programmatic General Permits

Several of the commenters who were opposed to the replacement of NWP 26 with activity-specific NWPs made a comparison to programmatic general permits. These commenters believe the Corps is mis-interpreting the meaning of "activities similar in nature" because programmatic general permits routinely authorize many different types of activities. The difference between programmatic general permits and other general permits is that programmatic general permits are based on the existence of a Federal, State or local regulation that duplicates that of the Corps and authorizes several specific activities, each of which is similar in nature. Other general permits are based on a singular specific activity. Instead of a single programmatic general permit the Corps could issue several separate general permits, each based on the specific activities in the Federal, state, or local program. However, the Corps believes this would involve additional and unnecessary paperwork and confusion for the regulated public.

F. Regulatory Flexibility Act

In its comments, the National Association of Home Builders stated that the Corps should have conducted a regulatory flexibility analysis, in conjunction with the modifications to NWP 26, as required by the Small Business Regulatory Enforcement

Fairness Act which is part of the Regulatory Flexibility Act. Such an analysis would develop and examine alternatives that minimize impacts on small business and would describe steps taken by the agency to minimize adverse effects to small business. The Corps believes that this requirement does not apply to modification of NWPs. The NAHB's letter referred to Section 603(a) of the RFA, which provides that whenever an agency is required by section 553 of the Administrative Procedures Act, or any other law, to publish general notice of proposed rulemaking for any proposed rule, it must conduct a flexibility analysis. However, the NWPs are permits, similar to individual and regional general permits; they are not regulations (rules) and therefore would not fall under this requirement. The Corps NWP regulations at 33 CFR Part 330 are in compliance with the RFA and the Corps believes that the NWPs are also in compliance with the RFA. Indeed, the purpose of the NWPs is to minimize unnecessary adverse effects on the regulated public and the entire review process focuses on identification and consideration of alternatives for authorizing activities with minimal adverse effects.

III. Prohibition Against Filling More Than 500 Linear Feet of Stream Bed

A. Consistency

In the December 13, 1996, **Federal Register**, the Corps stated that 500 feet was chosen as a cutoff point for consistency with NWPs 12 and 13. Most of the commenters opposed to the changes, pointed out that, under NWPs 12 and 13, reaching a length of 500 feet of impact triggers a PCN while under NWP 26 it triggers an IP. The Corps meant that the actual length was chosen to be consistent with the length in NWPS 12 and 13. It is recognized that the prohibition is more restrictive than the PCN requirement for NWPs 12 and 13. This matter will be reviewed in conjunction with the issuance of the new, activity specific, NWPs that will become effective when NWP 26 expires.

B. Work in Areas Much Smaller Than One Third Acre Will Be Precluded

Many of the commenters opposed to the 500-foot limit noted that a 500-foot length of a narrow stream bed or waterway could result in individual permit review of an impact area well below the 1/3-acre PCN threshold and far from the 3-acre limit that exists for NWP 26. In these cases, the degree of impact may be disproportionate to the acreage involved. For example, filling a 5-foot wide stream bed over a distance of O.5 mile would result in a loss of 0.30 acre of stream bed. Under acreage limits, alone, a PCN would not be required, yet the work could result in more than minimal adverse effects if the stream served important spawning habitat functions. Therefore, the Corps believes it has a responsibility to review those projects more closely as long as specific activities are undefined. We are continuing to collect data and will review this limitation in the activity-specific NWPs that will replace NWP 26.

C. Definition of Stream Bed

Almost all the commenters opposed to the 500-foot limit indicated that the Corps should distinguish between different types of streams and should provide clear definition of a stream. They also encouraged the Corps to take into consideration the characteristics of the stream's drainage basin and stream bed hydrology. They expressed concern that the southwestern region of the U.S. would be unduly burdened by this restriction. Finally, they cautioned against use of the "ordinary high water mark" (OHWM) for determining existence of a stream in that region (many dry runs have an OHWM, yet carry water only after heavy rain events).

In the December 13, 1996, preamble, the term "loss of waters of the U.S." was defined differently for the linear limitation for streambed than for the acreage limitation. For the acreage limitation, the term includes filling, excavation, drainage, and flooding impacts. For the 500 linear-foot limitation, the preamble specifically distinguishes the impacts to be considered as activities "directly affecting (filling or excavating) more than 500 linear feet of the stream bed of creeks or streams". When determining the 500-foot limitation, the Corps will evaluate the length of filling or excavating in the stream bed (within the ordinary high water mark). The term "stream bed" was meant to capture water bodies that normally have flowing water. This would include all perennial streams and many, but not all, intermittent streams. In deciding whether to apply the restriction to an intermittent stream, the Corps would consider whether the level of impact was minimal by applying professional judgement, considering the characteristics of the drainage basin and stream bed hydrology, etc. This determination should not be confused with a determination of jurisdiction.

IV. Use of NWP 26 With Other NWP's Cannot Exceed 3 Acres of Impact

A. Limitation vs Prohibition

Many of the comment letters, both those in support and those opposed to the changes to NWP 26, included statements indicating that the commenters might not be making the distinction between limitation and prohibition of multiple use of NWPs for one single and complete project (commonly referred to as "stacking"). The Corps has not prohibited the multiple use of other NWPs with NWP 26 to authorize a single and complete project. However, when multiple NWPs are used, the total acreage is limited to 3 acres. In addition, notification is required for projects where any NWP 12 through 40 is used with another NWP 12 through 40. This is not a prohibition of stacking; rather, stacking is allowed within the stated limits and conditions.

B. Unreasonable Assumption

Many of the commenters opposed to the changes stated that it is not reasonable to assume that two or more project components, each with minimal adverse effects on its own, will automatically add up to more than minimal adverse effects when put together. The Corps does not believe that two or more minimal adverse effect projects always add up to greater than minimal adverse effects. Rather, we recognize that the potential exists and therefore, there should be a mechanism (i.e., the PCN) to assure evaluation of each case. In the case of NWP 26, we also believe that a limit of 3 acres is appropriate to ensure that there can be equitable use of the NWP by members of the public while maintaining minimal cumulative adverse effects.

C. Contrary to § 330.6

Many of the commenters opposed to the changes stated that the stacking limitation is contrary to 33 CFR 330.6(c). However, that section reads, in its entirety:

Two or more different NWPs can be combined to authorize a "single and complete project" as defined at 33 CFR 330.2(I). However, the same NWP cannot be used more than once for a single and complete project.

That paragraph simply says that multiple use is acceptable; it does not say that it is mandatory that it be allowed in every case; nor does it make any statement about what type of conditions may be placed on use of multiple NWPs.

D. Hindrance of Well-planned Developments

Several commenters opposed to the limitations placed on NWP 26 stated that the new limits will discourage developers from proposing well-planned developments. They believe that, in order to qualify for an NWP under the lower limits, developers will present a larger number of smaller projects as "single and complete" rather than a more genuine, larger, single and complete project such as could be done with allowance for up to 10 acres of fill. Others indicated that developers would make less effort to "avoid and minimize" at the outset. Once they determined they would have to apply for an individual permit anyway, they would start out by requesting as much wetland fill as they might wish. Both of these scenarios are possible with the previous or current limits of NWP 26. The Corps doesn't believe that this would encourage developers to design projects this way. It is incumbent on the Corps to evaluate if a project is truly "single and complete" or is, rather, the first of several components of a larger single and complete project. In the same way, the Corps must determine if appropriate avoidance and minimization has been conducted and that the adverse effects are minimal. The Corps is considering this in more detail in the NWPs proposed to replace NWP 26.

E. Need for an Upper Limit

Several commenters opposed to the changes stated that an upper limit should not be necessary since a PCN is required any time more than one NWP 12 through 40 is applied to a single and complete project. Some of the same commenters suggested that there be provisions allowing for 3 acres to be exceeded for the most-often-used combinations of NWPs. As stated above, based on current knowledge of wetland science and of the types of projects proposed nationwide, the Corps believes that to ensure that adverse effects are minimal we, usually, need to maintain an upper acreage limit of 3 acres to projects authorized under one or more NWPs. However, a limit of 10 acres has been proposed for master planned developments in the activity-specific NWPs proposed to replace NWP 26 (63 FR 36040–36078).

V. Conclusion

Based on our review of the comments we have concluded that the 3 modifications:(1) the expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States, we made regarding NWP 26 are appropriate and should not be changed, with one exception. We have proposed to extend the expiration date of NWP 26 to March 28,1999, to ensure that there is adequate time to effectively involve other agencies and the public in the development of regional conditions for the new and modified, activity-specific, NWPs and to ensure that those NWPs are in place at the time NWP 26 expires.

Dated: July 17, 1998.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 98–19495 Filed 7–21–98; 8:45 am]

BILLING CODE 3710–92–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: New system of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, as amended, to publish a description of the systems of records it maintains containing personal information. In this notice the Board announces a new system of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The new system of records, designated DNFSB–7, is described below.

DNFSB–7

SYSTEM NAME:

Supervisor Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Board's technical, legal, and administrative staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files maintained by supervisors, indexed by employee name, containing positive or negative information used primarily to write annual or mid-year performance appraisals or to propose awards and honors. The files may contain written correspondence, examples of an employee's work, printed versions of electronic communications, private notes by the supervisor, and other records bearing on the individual's performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records are used by supervisors to write annual or mid-year performance appraisals for their employees or to propose awards and honors. Records may also be used in connection with disciplinary and adverse actions. These records are not disclosed outside DNFSB and will not be accessed by persons other than the supervisor maintaining the record and administrative staff personnel assigned to file or retrieve records, except as required by law consistent with the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer files.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Access is limited to the individual supervisor keeping the records and administrative personnel who may file or retrieve records. Records are stored in locked file cabinets or in locked desk drawers.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Most files in DNFSB–7 are purged once per year following completion of appraisals. Records are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW.. Suite 700, Washington, DC 20004–2901. Attention: Andrew Thibadeau.

NOTIFICATION PROCEDURE:

Request by an individual to determine if DNFSB–7 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 16, 1998.

John T. Conway,

Chairman.

[FR Doc. 98–19461 Filed 7–21–98; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Public Charter Schools Program (PCSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: A major purpose of the Public Charter Schools grant program is to increase understanding of the charter schools model by providing financial assistance for the design and initial implementation of charter schools.

Who May Apply: (a) State educational agencies (SEAs) in States with laws authorizing the establishment of charter schools. The Secretary awards grants to SEAs to enable them to conduct charter schools programs in their States. SEAs use their PCSP funds to award subgrants to "eligible applicants," as defined in this notice, for planning, program design, and initial implementation of a charter school.

(b) Under certain circumstances, an authorized public chartering agency participating in a partnership with a charter school developer. Such a partnership is eligible to receive funding directly from the U.S. Department of Education if—

(1) The SEA in its State elects not to participate in this program; or

(2) The SEA in its State does not have an application approved under this program.

If an SEA's application is approved in this competition, applications received from non-SEA eligible applicants in that State will be returned to the applicants. In such a case, the eligible applicant should contact the SEA for information related to its subgrant competition.

Note: The following States currently have approved applications under this program: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Oregon, Pennsylvania, Puerto Rico, South Carolina, Texas, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Eligible applicants in these States should contact their respective SEAs for information about participation in the State's charter school subgrant program.

Deadline for Transmittal of Applications: August 20, 1998.

Deadline for Intergovernmental review: September 21, 1998.

Applications Available: July 22, 1998.

Available Funds: $55,000,000.

Estimated Range of Awards:

State educational agencies: $250,000–$5,000,000 per year.

Other eligible applicants: $25,000–$150,000 per year.

Estimated Average Size of Awards:

State educational agencies: $3,000,000 per year.

Other eligible applicants: $75,000 per year.

Estimated Number of Awards:

State educational agencies: 10–15.

Other eligible applicants: 5–10.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: State educational agencies: Up to 36 months. Other eligible applicants: Up to 36 months.

Note: Grants awarded by the Secretary directly to non-SEA eligible applicants or subgrants awarded by SEAs to eligible applicants will be awarded for a period of up to 36 months, of which the eligible applicant may use—

(a) Not more than 18 months for planning and program design; and

(b) Not more than two years for the initial implementation of a charter school.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 (except § 75.210), 77, 79, 80, 81, 82, 85, and 86. Title X, Part C, Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 8061–8067.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive absolute or competitive preference over applications that do not meet the priority:

Invitational Priority—Empowerment Zones and Enterprise Communities

Projects that address linkages between charter school initiatives and comprehensive educational improvement strategies undertaken in Empowerment Zones and Enterprise Communities designated by the Departments of Agriculture or Housing and Urban Development.

SUPPLEMENTARY INFORMATION: As part of wider education reform efforts to strengthen teaching and learning, charter schools can be an innovative approach to improving public education and expanding public school choice. While there is no one model, public charter schools are exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They are intended to stimulate the creativity and commitment of teachers, parents, students, and citizens and contribute to better student academic achievement.

Information regarding the required contents of applications, diversity of projects, and waivers are provided in the application package for this program.

The following definitions, selection criteria, and allowable activities are taken from the Public Charter Schools statute, in Title X, Part C, of the Elementary and Secondary Education Act of 1965, *as amended*. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that—

(1) In accordance with an enabling State statute, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to

by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements; and

(11) Operates in accordance with State law.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with this program.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

Selection Criteria for SEAs

The maximum possible score for all of the criteria in this section is 100 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an SEA, the Secretary considers the following criteria:

(a) The contribution that the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State content standards, State student performance standards, and, in general, a State's education improvement plan (20 points).

(b) The degree of flexibility afforded by the SEA to charter schools under the State's charter schools law (20 points).

(c) The ambitiousness of the objectives for the State charter schools grant program (20 points).

(d) The quality of the strategy for assessing achievement of those objectives (20 points).

(e) The likelihood that the charter schools grant program will meet those objectives and improve educational results for students (20 points).

Selection Criteria for Non-SEA Eligible Applicants

The maximum possible score for all of the criteria in this section is 120 points. The maximum possible score for each criterion is indicated in parentheses following each criterion. In evaluating an application from an eligible applicant other than an SEA the Secretary considers the following criteria:

(a) The quality of the proposed curriculum and instructional practices (20 points).

(b) The degree of flexibility afforded by the SEA and, if applicable, the local educational agency to the charter school (20 points).

(c) The extent of community support for the application (20 points).

(d) The ambitiousness of the objectives for the charter school (20 points).

(e) The quality of the strategy for assessing achievement of those objectives (20 points).

(f) The likelihood that the charter school will meet those objectives and improve educational results for students (20 points).

Allowable Activities

An eligible applicant receiving a grant or subgrant under this program may use the grant or subgrant funds for only—

(a) Post-award planning and design of the educational program, which may include—

(1) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and

(2) Professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include—

(1) Informing the community about the school;

(2) Acquiring necessary equipment and educational materials and supplies;

(3) Acquiring or developing curriculum materials; and

(4) Other initial operating costs that cannot be met from State or local sources.

For Applications or Information Contact: John Fiegel, U.S. Department of Education, 600 Independence Avenue, SW, Room 4512, Portals Building, Washington, DC 20202–6140. Telephone (202) 260–2671. Internet address: John__Fiegel@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8061–8067.

Dated: July 17, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–19548 Filed 7–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–239–001]

Destin Pipeline Company, L.L.C., Notice of Proposed Changes in FERC Gas Tariff

July 16, 1998.

Take notice that on July 13, 1998, Destin Pipeline Company, L.L.C (Destin) tendered for filing certain modifications to its FERC Gas Tariff, Original Volume No. 1, to become effective on July 1, 1998.

Destin states that the purpose of this filing is to clarify its Rate Schedule FT–1 and FT–2 banking provisions filed on June 1, 1998 in compliance with the Commission's Letter Order issued June 26, 1998 in the above-referenced docket (June 26 Order), as more particularly described in Destin's July 13, 1998 filing.

Destin requests that its proposed tariff changes be made effective July 1, 1998, which is the effective date set forth in the June 26 Order for the tariff sheets filed in the June 1, 1998 filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19451 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3026–000]

DTE Edison America, Inc.; Notice of Issuance of Order

July 16, 1998.

DTE Edison America, Inc. (DTE Edison America), an affiliate of Detroit Edison Company, filed an application for Commission authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, DTE Edison America requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by DTE Edison America. On July 16, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's July 16, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DTE Edison America should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, DTE Edison America is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DTE Edison America, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of DTE Edison America's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 17, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19500 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–660–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 16, 1998.

Take notice that on July 10, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–660–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to upgrade an existing delivery point located in O'Brien County, Iowa, to provide incremental natural gas service to MidAmerican Energy Company (MidAm), under Northern's blanket certificate issued in Docket No. CP82–401–000 [1] pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade the existing delivery point at an estimated cost of $47,000 to provide incremental natural gas service to MidAm under currently effective throughput service agreements. Estimated incremental volumes proposed to be delivered to MidAm at this delivery point will be 695 MMBtu on a peak day and 62, 781 MMBtu on an annual basis.

Northern states that the volumes to be delivered to the MidAm after the request do not exceed the total volumes authorized prior to the request. The proposed activity is not prohibited by Northern's existing tariff and Northern has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 358.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

[1] *See*, 20 FERC ¶ 62,410 (1982).

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19448 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–83–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

July 16, 1998.

Take notice that on July 13, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance several non-conforming service agreements and, as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 13, 1998:

Fifth Revised Sheet No. 363
Second Revised Sheet No. 364
Original Sheet No. 365
Sheets Nos. 366 through 374

Northwest states that each of the service agreements contains a contract-specific operational flow order provision and/or a provision imposing subordinate primary corridor rights with an exemption from reservation charge adjustments for nominations that are not scheduled as a result of the subordinate scheduling priority. The tariff sheets are submitted to add these agreements to the list of non-conforming service agreements contained in Northwest's tariff, and to remove three terminated service agreements from such list.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19449 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–057

Pacific Gas and Electric Company El Dorado Irrigation District; Notice Extending Deadline

July 16, 1998.

By application filed April 17, 1998, Pacific Gas and Electric Company (PG&E) and the El Dorado Irrigation District (El Dorado) asked to transfer the license for Project No. 184 from PG&E to El Dorado. The Commission issued a Notice of Transfer of License on April 29, 1998 (63 FR 24780, May 5, 1998), setting June 10, 1998, as the deadline for filing comments, protests, and motions to intervene. On June 10, 1998, Alpine County, California, *et al.* (movants),[1] filed a "Motion to Intervene, Request for Extension of Comment Deadline, and Preliminary Comments," which includes a request for a 60-day extension of the June 10 comment deadline to August 9, 1998. PG&E and El Dorado filed replies in opposition to the extension request. Movants have shown good cause for granting an extension of time.[2] and notice is hereby given that the deadline for filing comments, protests, and motions to intervene in this proceeding is extended to August 7, 1998.[3]

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19453 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

[1] League to Save Sierra Lakes, El Dorado County Taxpayers for Quality Growth, Forty-Niner Council of the Boy Scouts of America, Plasse Homestead Homeowners' Association, Kit Carson Lodge, Caples Lake Resort, Kirkwood Meadows Public Utilities District, Northern Sierra Summer Homeowners' Association, East Silver Lake Improvement Association, South Silver Lake Homeowners' Association, Lake Kirkwood Association, Plasse's Resort, California Sportfishing Protection Alliance, Environmental Planning and Information Council of Western El Dorado County, Inc., Friends Aware of Wildlife Needs, Safegrow, California Native Plant Society, Caples Lake Homeowners Association, Soreson's Resort, and Sierra Club.

[2] *See* 18 CFR 385.2008(a).

[3] August 9, 1998 falls on a Sunday.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110]

Pacific Gas and Electric Company; Notice of Technical Workshop on Action Alternatives, Water Rights, and Water Balance Modeling

July 16, 1998.

On May 5, 1998, the Federal Energy Regulatory Commission (Commission) issued notice of a site visit and scoping meetings pursuant to the preparation of an Environmental Impact Statement (EIS) in support of the Commission's decision on a proposed amendment to the license for the Potter Valley Project (PVP; FERC No. 77–110). The proposed amendment involves changes in the minimum flow requirements at the project, consisting of increased releases to the Eel River, which would result in overall decreased diversions to the Russian River. The PVP is licensed to Pacific Gas and Electric Company (PG&E) and is located in Lake and Mendocino counties. California.

The purpose of this notice is to advise all parties of a technical workshop that will be held to obtain additional information on the proposed amendment, its relationship to existing water rights, and available modeling approaches to evaluate water balances between the two river basins. This technical workshop will be held at the Ukiah Valley Conference Center, 200 S. School Street, Ukiah, California, on August 11, 1998, from 9 am to 5 pm. All interested parties are invited to attend.

Three subjects will be covered at the workshop: (1) PG&E's recently completed Implementation Plan associated with the proposed license amendment; (2) existing water rights in the Eel and Russian rivers; and (3) comparison of three alternative water balance models that have been identified in filings for this proceeding. The first half of the workshop will consist of presentations by staff from PG&E, speaking on their Implementation Plan, and by staff from the California State Water Resources Control Board, speaking on water rights issues. The second half of the workshop will consist of presentations by the three parties offering different water balance models: PG&E, the Round Valley Tribes, and the Sonoma County Water Agency, followed by discussion of the models. The goals of these discussions are to understand the relative differences among the models and to attempt to achieve consensus on the best available

water balance model for application to the PVP EIS.

For additional information on this workshop. please contact the FERC Project Manager, Dr. John M. Mudre at (202) 219–1208.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19454 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10942–001 and 10416–003]

Skykomish River Hydro, Washington Hydro Develop. Corp.; Notice of Meetings

July 16, 1998.

A meeting will be convened by staff of the Office of Hydropower Licensing on Tuesday, August 11, 1998, at 10:00 a.m. at the Lynwood City Hall, 19100 44th Avenue West, Lynwood, Washington. The purpose of this meeting is to learn the status of the applicant's response to the Commission's March 19, 1998, additional information request on the proposed Martin Creek Project (P–10942–001). In particular, the meeting will focus on the project's consistency with the President's Forest Plan.

Following the first meeting, the Commission will attend a meeting at the same location on the proposed licensing of the Anderson Creek Project (P–10416–003). The meeting will involve the Forest Service and the applicant, Washington Hydro Development Corporation, who will discuss the possibility of redesigning the project to minimize environmental impacts.

If you have any questions concerning these matters, please contact Mr. Carl Keller at (202) 219–2831 or e-mail at carl.keller@ferc.fed.us, or Mr. Alan Mitchnick at (202) 219–2826 or e-mail at alan.mitchnick@ferc.fed.us.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19452 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–659–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 16, 1998.

Take notice that on July 8, 1998, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky, 42304, filed in docket No. CP98–659–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon a receipt meter located in Hopkins County, Kentucky, under Applicant's blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to abandon by removal the Reynolds-Narge Creek receipt meter station, which was constructed in 1992. Applicant asserts that it is requesting such authorization because the producer has discontinued deliveries of natural gas at this meter. Applicant further asserts that the producer, Wiser Oil Company (Wiser), which had been delivering natural gas to this meter, has been acquired by Orbit Gas Company (Orbit), and the natural gas from Wiser's wells in this area is now being delivered to Orbit. It is also asserted that Wiser has cut and capped its line to the meter station.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19447 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–38–000]

Vastar Gas Marketing, Inc. and Atlantic Richfield Company; Notice of Petition for Dispute Resolution

July 16, 1998.

Take notice that, on July 7, 1998, Vastar Gas Marketing, Inc. (VGM) and Atlantic Richfield Company (ARCO) filed a petition requesting the Commission to resolve VGM and ARCO's dispute with El Paso Natural Gas Company (El Paso) over El Paso's revised $3,619,181.55 Kansas ad valorem tax refund claim in Docket No. RP98–44–000. VGM and ARCO seek rulings: 1) That VGM has no Kansas ad valorem tax refund liability to El Paso; 2) that El Paso has failed to substantiate its refund claim against ARCO and, therefore, that ARCO has no Kansas ad valorem tax refund obligation to El Paso; and 3) that El Paso waived any refund claim attributable to Kansas ad valorem tax overcharges in a March 1, 1988 settlement with ARCO Oil & Gas Company. In the alternative, if the Commission finds that ARCO does owe Kansas ad valorem tax refunds to El Paso, VGM and ARCO request a ruling that such refund liability is limited to ARCO's own working interest and the attributable royalties. VGM and ARCO's petition is on file with the Commission and open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required First Sellers to refund Kansas ad valorem tax reimbursements to pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., First Sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with

[1] See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado v. FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

the pipeline over the amount of Kansas ad valorem tax refunds owed.

Any person desiring to comment on or make any protest with respect to the above-referenced petition should, on or before August 6, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19446 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–14–000]

Warren Transportation, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 16, 1998.

Take notice that on July 13, 1998, Warren Transportation, Inc. (WTI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed tariff sheet, with an effective date of August 14, 1998:

First Revised Sheet No. 190

WTI states that it is submitting this tariff sheet to clarify Section 22 of its tariff as a result of an order issued by the Commission in Docket No. MG98–9–000 on June 12, 1998. WTI states that because of the June 12 Order, it is filing to remove nonoperating personnel from the tariff provision that designates shared employees.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–19450 Filed 7–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6127–8]

Toxic Release Inventory; Submission of ICR No. 1704.04 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting [EPA ICR No. 1704.04; OMB Control No. 2070–0143] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on August 31, 1998. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on December 24, 1997 (62 FR 67358). EPA received comments on this ICR during the comment period, and has addressed the comments in the body of the ICR submitted to OMB.

DATES: Additional comments may be submitted on or before August 21, 1998.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1704.04.

ADDRESSES: Send comments, referencing EPA ICR No. 1704.04 and OMB Control No. 2070–0143, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, S.W., Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1704.04; OMB Control No. 2070–0143.

Current Expiration Date: Current OMB approval expires on August 31, 1998.

Title: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting.

Abstract: EPCRA section 313 requires certain facilities manufacturing, processing or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases of such chemicals annually. Each such facility must file a separate report for each such chemical. In accordance with the authority in EPCRA, EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise meets the current reporting thresholds but estimates that the total amount of the chemical in production-related waste does not exceed 500 pounds per year, and that the chemical was manufactured, processed or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A (EPA Form 9350–2) in lieu of a complete TRI reporting Form R (EPA Form 9350–1). In submitting the Form A, the facility certifies that the sum of the amount of each EPCRA section 313 chemical or chemicals did not exceed 500 pounds in total production-related waste for the reporting year, and that each chemical was manufactured, processed or otherwise used in an amount not exceeding 1 million pounds during the reporting year. EPA estimates that using the alternate threshold may save reporting facilities up to 487,000 hours, with a dollar value of $29 million, compared to the cost of reporting on Form R.

The primary function served by the submission of the Form A is to satisfy

the statutory requirement to maintain reporting on a substantial majority of releases for all listed toxic chemicals. Without the Form A, users of TRI data would not have access to any information on these chemicals. The Form A may also serve as a de facto range report, which may be useful to any party interested in amounts being handled at a particular facility or for broader statistical purposes. Additionally, the Form A provides compliance monitoring for enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule.

Responses to this collection of information are mandatory (see 40 CFR Part 372) and facilities subject to reporting must either submit a Form A or a Form R.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 67.8 hour per response for an estimated 13,157 respondents making one or more submissions of information. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are those chemical facilities that manufacture, process or otherwise use certain toxic chemicals listed on the Toxic Release Inventory (TRI) and which are required, under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), to report annually to EPA their environmental releases of such chemicals.

Estimated No. of Respondents: 13,157.

Estimated Total Annual Burden on Respondents: 909,392 hours.

Frequency of Collection: Annual.

Changes in Burden Estimates: There is a decrease of about 82,000 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 991,301 hours currently to an estimated 909,392 hours. This reflects downward adjustments made in calculating the number of eligible respondents and responses based on TRI reporting data from the 1996 reporting year (the most recent TRI data available). In addition EPA has modified the Form A to permit respondents to make multiple certifications on a single form, with an accompanying change in the number of estimated responses, producing another downward change in the burden to respondents.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 16, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–19520 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6127–7]

Announcement of National Drinking Water Advisory Council Benefits Working Group; Open Meeting

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a conference call for the Benefits Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on August 11, 1998 from 1:00 p.m. until 3:00 p.m. EDT. The conference call meeting location will be in the Carson Room at the Environmental Protection Agency (EPA) Education Center, 401 M Street, SW, Washington DC 20460. The meeting is open to the public but conference lines and/or seating will be limited and access will be granted on a first-come, first-served basis.

The purpose of this conference call is to review a draft report of advice and recommendations to NDWAC, based on the discussions and presentations of the May 19–20, 1998 meeting of the working group. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, please contact, John Bennett, Designated Federal Officer, Benefits Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–0446, fax 202–260–3762, and e-mail address bennett.johnb@epamail.epa.gov.

Dated: July 16, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–19518 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34127; FRL 5799–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 19, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 19, 1999 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. *Note: Registration number(s) preceded by ** indicate a 30–day comment period.*

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000618–00067	Mertect Fungicide	Thiabendazole	Dried beans, soybeans, rice
**000769–00694	SMCP Xtraban Roach Concentrate	Chlorpyrifos; Dichlorovos	Use in food areas of food handling establishments
019713–00400	Drexel Acephate 75 WSP	Acephate	Rangeland, pasture use
019713–00410	Drexel Acephate Technical	Acephate	Forestry use

Note: Registration number(s) preceded by ** indicate a 30–day comment period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
019713	Drexel Chemical Company, 1700 Channel Avenue, Memphis, TN 38113.
000618	Merck Company, Inc., P.O. Box 2000, Rathway, NJ 07065.
000769	SureCo, 7501 Harps Road, Raleigh, NC 27615.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 9, 1998

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–19258 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6127–3]

Notice of Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment; opportunity for public meeting.

SUMMARY: In accordance with section 122(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), notification is hereby given of a proposed administrative *de minimis* settlement concerning the Novak Sanitary Landfill Superfund Site in Lehigh County, Pennsylvania, with the party listed below. The settlement requires the settling party to pay a total of $79,565.24 to the Hazardous Substances Superfund. The settlement includes an EPA covenant not to sue the settling party pursuant to sections 122(f) and 122(g) of CERCLA. Section 122(g) of CERCLA provides EPA with the authority to enter into a *de minimis* settlement.

For thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will reconsider the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Any comments received, and EPA's responses, will be available for public inspection at the Parkland Library located at 4422 Walbert Avenue, Allentown, PA. Comments and responses can also be reviewed at U.S. EPA Region III at the address provided below. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be provided on or before August 21, 1998.

ADDRESSES: A copy of the proposed settlement may be obtained from Joan Martin-Banks, Mailcode (3HS11), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–3156, prior to July 9, 1998, and from Joan Martin-Banks, Mailcode (3HS11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, after July 9, 1998. Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, prior to July 23, 1998, and to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, after July 23, 1998, and should refer to: In *Re: Novak Sanitary Landfill Superfund Site*, Lehigh County, Pennsylvania, U.S. EPA Docket No. III–97–04–DC.

FOR FURTHER INFORMATION CONTACT: Marcia Preston, Mail Code (3RC21), (215) 566–2679, U.S. Environmental Protection Agency, 841 Chestnut

Building, Philadelphia, PA 19107, prior to July 23, 1998, and at (215) 814–2679, Mail Code (3RC21), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, after July 23, 1998.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis Settlement:* In accordance with section 122(I)(1) of CERCLA, notification is hereby given of a proposed administrative settlement concerning the Novak Sanitary Landfill Superfund Site, in Lehigh County, PA. Notification of an opportunity for a public meeting pursuant to section 7003 of the Resource Conservation and Recovery Act ("RCRA") is also hereby given. The agreement was proposed by EPA Region III. Subject to review by the public pursuant to this document, the agreement has met with the approval of the Attorney General or her designee, United States Department of Justice.

Below is the party who has executed a binding certification of its consent to participate in this settlement:

The Lehigh Valley Vocational-Technical School. This party has agreed to pay $79,565.24, subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period or at a public meeting, if one is requested, discloses facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Money collected from the *de minimis* party will be used for past response costs incurred at or in connection with the Site. The amounts to be paid by the *de minimis* party include a premium to cover the risk that unknown conditions are discovered or information previously unknown to EPA is received.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA and section 7003 of RCRA. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. The *de minimis* party is responsible for less than one percent of the volume of waste that may have contained hazardous substance disposed of at the Site. EPA issued a draft settlement proposal on May 10, 1995. De minimis settlements with seven other *de minimis* parties became effective on July 10, 1995. In July of 1996, EPA issued a final settlement proposal to Lehigh Valley Vocational-Technical School embodied in the Administrative Order on Consent. The proposed settlement reflects conditions known to the parties on or about November 19, 1996. The *de minimis* settling party will be required to pay its volumetric share of the Government's past response costs, estimated costs incurred by the potentially responsible parties that performed the Remedial Investigation/Feasibility Study("RI/FS") for the Site, and the estimated future response costs at the Site (excluding any federal claims for natural resources damages or any State claims), plus the premium amount.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–19517 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011405–007.

Title: ATFI Working Group Agreement.

Parties:

The Latin America Agreement
The "8900" Lines Agreement
Inter-American Freight Conference
Israel Trade Conference
Trans-Atlantic Conference Agreement
Transpacific Westbound Rate Agreement
United State/Australia-New Zealand Association
United States/South Europe Conference
United States Southern Africa Conference
A.P. Moller-Maersk Line
Crowley American Transport, Inc.
Evergreen Marine Corporation (Taiwan) Ltd.
King Ocean Service de Venezuela, S.A.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Tropical Shipping & Construction Company, Limited
Wilhelmsen Lines AS
Zim-Israel Navigation Co.
Hapag-Lloyd Container Linie GmbH

Synopsis: The proposed amendment would change the name of the Agreement to "The Ocean Common Carrier Working Group Agreement." It also revises the Agreement's authority to permit the parties to discuss and advocate common positions related to as yet unenacted ocean shipping legislation. The amendment also restates the Agreement and makes a number of nonsubstantive changes to the Agreement's provisions.

Agreement No.: 217–011628.

Title: KL & NYK Space Charter Agreement.

Parties:

Kawasaki Kisen Kaisha, Ltd. ("KL")
Nippon Yusen Kaisha ("NYK").

Synopsis: The proposed Agreement authorizes the chartering of space by NYK on vessels operated by KL in the trade between ports and inland points in Japan and ports in the states of Oregon and Washington, and inland points via those ports. The parties have requested a shortened review period.

Agreement No.: 224–201056.

Title: Broward County-Arawak Line Lease Agreement.

Parties:

Broward County
Arawak Line Services (USA), Inc.

Synopsis: Under the agreement, Arawak will lease 4.46 acres of land at Port Everglades, Broward County. The terms of the lease runs through July 31, 1999.

Dated: July 17, 1998.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–19535 Filed 7–21–98; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Nominations of Members to the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Announcement of Request for Membership Nominations.

SUMMARY: The Office of the Secretary requests nominations of individuals to serve on the Advisory Committee on Blood Safety and Availability (ACBSA) in accordance with its charter. Appointments will be made for a term of four years. It is not necessary to re-nominate individuals previously nominated; all nominations previously received have been retained and remain active.

DATES: All nominations must be received at the address below by no

later than 4:00 p.m. EDT August 28, 1998.

ADDRESSES: All nominations shall be submitted to Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue S.W., Washington, D.C. 20201. Phone (202) 690–5560.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue S.W., Washington, D.C. 20201. Phone (202) 690–5560.

NOMINATIONS: Persons nominated for membership should be from among authorities knowledgeable in blood banking, transfusion medicine, bioethics and/or related disciplines. Members shall be selected from State and local organizations, blood and blood products industry including manufacturers and distributors, advocacy groups, consumer advocates, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations and from among communities of persons who are frequent recipients of blood and blood products.

INFORMATION REQUIRED: Each nomination shall consist of a package that, at a minimum, includes:

A. The name, return address, daytime telephone number and affiliation of the individual being nominated, the basis for the individual's nomination, the category for which the individual is nominated and a statement that the nomination individual is willing to serve as a member of the committee;

B. The name, return address and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact information;

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations will not be considered. Nomination materials must bear original signatures, and facsimile transmissions or copies are not acceptable.

Dated: July 15, 1998.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[HR Doc. 98–19545 Filed 7–21–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulation (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13¾% for the quarter ended June 30, 1998. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 16, 1998.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 98–19498 Filed 7–21–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to grant a "Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Health Care Policy and Research." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection request to allow AHCPR to conduct surveys.

DATES: Comments on this notice must be received by September 21, 1998.

ADDRESSES: Written comments should be submitted to: Ruth A. Celtnieks, Reports Clearance Office, AHCPH, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Office, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION: .

Proposed Project

Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Health Care Policy and Research

In response to Executive Order 12862, the Agency for Health Care Policy and Research (AHCPR) plans to conduct voluntary customer satisfaction surveys to assess strengths and weakiness in program services. Customer satisfaction surveys to be conducted by AHCPR may include readership surveys from individuals using AHCPR automated and electronic technology data bases to determine satisfaction with the information provided or surveys to assess effects of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHCPR program services. A generic approval will be requested from OMB to conduct customer satisfaction surveys over the next three years.

Method of Collection

The data will be collected using a combination of preferred methodologies appropriate to each survey. These methodologies are:

- Evaluation forms;
- Mail surveys;
- Automated and electronic technology (e.g., instant fax, AHCPR Clearinghouse Publications); and
- Telephone surveys

The estimated annual hour burden is as follows:

Type of survey	Number of respondents	Average burden/response	Total hours of burden
Mail/Telephone Surveys	23,100	0.25	5,755
Focus Groups	72	2.0	144
Totals	23,172	.255	5,919

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of 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 upon the respondents, including 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.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: July 14, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–19433 Filed 7–21–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

NAME: Task Group Session of the Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH); agenda revision.

SUMMARY: The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention published a notice in the **Federal Register** of May 14, 1998 (Volume 63, Number 93, Page 26807–26808), concerning the Task Group Session of the Safety and Occupational Health Study Section review of Request for Application (RFA) Number 98030, entitled, "Occupational Radiation and Energy-related Health Research Grants."

ACTION: Because of demands on the review process, the review, discussion and evaluation of RFA Number 98030 will be deferred to the October 29—30, 1998 meeting of the Safety and Occupational Health Study Section. The remainder of the previously published agenda for the August 5–7, 1998 meeting is unchanged.

CONTACT PERSON FOR MORE INFORMATION: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: July 14, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–19488 Filed 7–21–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance.

On May 12, 1998, a notice was published in the **Federal Register** (63 FR 26204–26206) that an application had been filed with the Fish and Wildlife Service by Iron County and the Utah Division of Wildlife Resources for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened Utah Prairie Dog (*Cynomys parvidens*). Anticipated incidental take of this species is in conjunction with otherwise legal activities including, but not limited to, development and maintenance of facilities on non-Federal land in Iron County, Utah, pursuant to the Permit Acceptance Statement that implements the Habitat Conservation Plan prepared by Iron County and the Division.

Notice is hereby given that on July 9, 1998, as authorized by the provisions of the Act, the Service issued an incidental take permit (permit number PRT–MB000142–0) to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in section 10(C)(2)(B) of the Act, as amended.

Additional information on this permit action may be obtained by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001, on weekdays between the hours of 8:00 a.m. and 4:30 p.m.

Dated: July 19, 1998.

Terry Terrell,

Deputy Regional Director, Region 6.

[FR Doc. 98–19483 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Whiskeytown Unit Whiskeytown-Shasta-Trinity National Recreation Area; Operation of Marina Services

SUMMARY: The National Park Service will reissue, by August 1, 1999, a concession Prospectus to continue operation of marina services within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area located in northern California. This prospectus is now fully competitive with no right of preference in renewal given to the current concessioner. The existing business includes slip rental, boat rental and repair, boat gas, food, merchandise, tent camping, RV park, and showers. These services are located in two separate sections of the Whiskeytown Unit. Most services are provided seasonally from approximately the last week in May to the first week in September. The annual gross receipts average about $500,000. The new contract will be for 10 years and will require an improvement program estimated to cost about $178,800.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00. Parties interested in obtaining a copy should send a check or money order, NO CASH, payable to "National Park Service" to the following address: National Park Service, Pacific Great Basin Support Office, Office of

Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372, Attention: Teresa Jackson, "Mail Room Do Not Open".

A Tax Identification Number (TIN) OR Social Security Number (SSN) must be provided on all checks. Please include a mailing address indicating where to send the prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: July 13, 1998.

Patricia Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–19476 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

North Country National Scenic Trail, Wisconsin; Notice of Availability

SUMMARY: A public planning process has been conducted for Northwest Wisconsin and the Adjoining Minnesota Region to select a specific route or trailway for the North Country National Scenic Trail in this region. The planning process identified and mapped a specific "corridor of opportunity" within which public and private partners working to establish and manage the trail will work to secure lands on which the actual footpath can be constructed. This will require the cooperation of willing landowners. Lands may be secured by outright purchase, easement, lease, or voluntary use agreements. The identified corridor is several landowners wide to allow flexibility in working with willing landowners to find a mutually agreeable alignment for the trail. A copy of the trailway plan entitled "Final Trailway Plans for Northwest Wisconsin and the Adjoining Minnesota Region" can be obtained by writing to the Superintendent at the address listed below.

FOR FURTHER INFORMATION CONTACT: Superintendent Tom Gilbert, Ice Age, North Country, and Lewis and Clark National Trails, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711; 608–264–5610.

SUPPLEMENTARY INFORMATION: In March 1980, Federal legislation authorized the establishment of the North Country National Scenic Trail (NST) as a component of the National Trails System (16 U.S.C. 1241 et seq.). The trail will extend approximately 4,200 miles across seven northern States: New York, Pennsylvania, Ohio, Michigan, Wisconsin, Minnesota, and North Dakota. Approximately 1,484 miles are completed and open to public use. A comprehensive management plan, published in September 1982, identified a general route for the trail.

Dated: July 9, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–19474 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

North Country National Scenic Trail; Notice of Intent

SUMMARY: A public planning process has been initiated to consider a change in the route of the North Country National Scenic Trail in the State of Minnesota. Specifically, the feasibility of rerouting the trail through the State's Arrowhead Region will be investigated. If found to be feasible, the 1982 Comprehensive Plan for Management and Use, will be amended. The planning process will identify and map a specific "corridor of opportunity" within which public and private partners working to establish and manage the trail will work to secure lands on which the actual footpath can be constructed. This will require the cooperation of willing landowners. Lands may be secured by outright purchase, easement, lease, or voluntary use agreements. This planning process will produce a plan that will serve as an amendment to the 1982 North Country, Comprehensive Plan for Management and Use.

FOR FURTHER INFORMATION CONTACT: Superintendent Tom Gilbert. Ice Age, North Country, and Lewis and Clark National Trails, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711; 608–264–5610.

SUPPLEMENTARY INFORMATION: In March 1980, Federal legislation authorized the establishment of the North Country National Scenic Trail (NST) as a component of the National Trails System (16 U.S.C. 1241 et seq.). The trail will extend approximately 4,200 miles across seven northern States: New York, Pennsylvania, Ohio, Michigan, Wisconsin, Minnesota, and North Dakota. Approximately 1,484 miles are completed and open to public use. A comprehensive management plan, published in September 1982, identified a general route for the trail.

Dated: July 9, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–19473 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Mississippi River Coordinating Commission Meeting; Notice of Meeting

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, August 20, 1998; 6:30 p.m.; Council Chambers, Metropolitan Council, 230 East Fifth Street, St. Paul, Minnesota.

An agenda for the meeting will include discussion of the functions of the Mississippi River Coordinating Commission and the range of alternatives for accomplishing those functions after the Commission sunsets. Public statements about matters related to the Mississippi National River and Recreation Area (MNRAA) will be taken.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, MNRAA, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

Dated: July 9, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–19475 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Sand Creek, CO in the Possession of the Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human

remains from Sand Creek, CO in the possession of the Colorado Historical Society, Denver, CO.

A detailed assessment of the human remains was made by Colorado Historical Society professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, and the Arapaho Tribe of the Wind River Reservation.

On November 29, 1864, human remains representing one individual was taken from the Sand Creek Massacre site, most likely by Major Jacob Downing. These human remains, a scalplock, were donated to the Colorado Historical Society in 1911 by Mrs. Jacob Downing. No known individual was identified. No associated funerary objects are present.

The human remains consist of a human scalplock. Following the Sand Creek Massacre, Congressional testimony provided by eyewitnesses records numerous examples of soldiers and officers mutilating the dead and removing cultural items for "trophies". Major Jacob Downing was present at Sand Creek on November 29, 1864 as an officer of the First Regiment of the Colorado Volunteers. Based on the preponderance of the evidence, these human remains have been determined to be Native American and taken at Sand Creek, CO. Consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, and the Arapaho Tribe of the Wind River Reservation indicates that both Cheyenne and Arapaho people were slain at Sand Creek, CO.

Based on the above mentioned information, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Colorado Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, and the Arapaho Tribe of the Wind River Reservation.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, and the Arapaho Tribe of the Wind River Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anne Wainstein Bond, Director of Collections and Exhibitions, Colorado Historical Society, 1300 Broadway, Denver, CO 80203; telephone: (303) 866–4691, before August 21, 1998. Repatriation of the human remains and associated funerary objects to the Cheyenne-Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, and the Arapaho Tribe of the Wind River Reservation may begin after that date if no additional claimants come forward.

Dated: July 6, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–19537 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Control of the Gila National Forest, USDA Forest Service, Silver City, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the control of the Gila National Forest, USDA Forest Service, Silver City, NM.

A detailed assessment of the human remains was made by Arizona State Museum, Field Museum, Logan Museum, Maxwell Museum (University of New Mexico), Museum of New Mexico, Ohio Historical Society, Peabody Museum (Harvard University), University of Texas at Austin, and Western New Mexico University Museum professional staffs and USDA Forest Service professional staff in consultation with representatives of the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Zuni.

In 1935 and 1936, human remains representing 19 individuals were recovered from Starkweather Ruin within the Gila National Forest during legally authorized excavations by Paul H. Nesbitt of Beloit College, Beloit, WI. These human remains are presently curated at the Logan Museum at Beloit College. No known individuals were identified. The 45 associated funerary objects include ceramic vessels and sherds, shell and stone jewelry, and a projectile point.

Based on material culture, architecture, and site organization, the Starkweather Ruin has been identified as an Upland Mogollon pithouse village and pueblo occupied between 500–1000 A.D. and 1100-1300 A.D.

Between 1935-1955, human remains representing 51 individuals were recovered from SU site, Oak Springs Pueblo, Tularosa Cave, Apache Creek Pueblo, Turkey Foot Ridge Stie, Wet Leggett Peublo, Three Pines Pueblo, South Leggett Pueblo, and Brown site by Dr. Paul Martin of the Field Museum, Chicago, IL. These human remains are currently curated at the Field Museum, Chicago, IL. No known individuals were identified. The 115 associated funerary objects include ceramic vessels and sherds, stone and shell jewelry, stone and bone tools, and projectile points.

Based on material culture, architecture, and site organization, the nine sites listed in the preceding paragraph have been identified as an Upland Mogollon cave, pithouse villages, and pueblos occupied between 300-1300 A.D.

In 1955, human remains representing 19 individuals were recovered from Apache Creek Pueblo (LA 2949) during legally authorized excavations and collections conducted by Stewart Peckham of the Museum of New Mexico as part of a New Mexico Highway's Department project. These human remains are currently curated at the Museum of New Mexico. No known individuals were identified. The 32 associated funerary objects include ceramic vessels, and shell and stone jewelry.

Based on material culture, architecture, and site organization, Apache Creek Pueblo (LA 2949) has been idetnfied as an Upland Mogollon masonry pueblo with pithouses occupied between 1150-1300 A.D.

In 1987 and 1988, human remains representing three individuals were recovered from the SU site (LA 64931) and the Brown site (LA 68924) during legally authorized excavations conducted by Dr. Chip Wills of the University of New Mexico as part of a field school. These human remains are currently curated at the Maxwell Museum of Anthropology, University of New Mexico. No known indviduals were identified. The 12 associated funerary objects include stone tools and animal bone.

Based on material culture, architecture, and site organization, the SU site and the Brown site have been

identified as an Upland Mogollon village and masonry roomblock occupied between 600 1100 A.D.

Between 1979-1986, human remains representing one individual were recovered from the WS Ranch site during legally authorized excavations and collections conducted by Dr. James A. Neely of the University of Texas at Austin. These human remains are currently curated at the University of Texas at Austin. No known individual was identified. The five associated funerary objects include lithics, sherds, and ceramic jars. The ceramic jars are curated at Western New Mexico University.

Based on matérical culture, architecture, and site organization, the WS Ranch site has been identified as an Upland Mogollon masonry pueblo occupied between 1150 -1300 A.D.

In 1933, human remains representing three individuals from Mogollon Village during legally authorized excavations and collections conducted by Dr. Emil Haury of the Gila Pueblo Foundation. These human remains are currently curated at the Peabody Museum, Harvard University and the Arizona State Museum, University of Arizona. No known individuals were identified. The seven associated funerary objects include beads and a projectile point fragment.

Based on material culture, architecture, and site organization, Mogollon Village has been identified as an Upland Mogollon pithouse village occupied between 600-1050 A.D.

Between 1947-1949, human remains representing nine individuals were recovered from the Jewett Gap site during legally authorized excavations and collections by the Gila Pueblo Foundation. These human remains are currently curated by the Arizona State Museum, University of Arizona. No known individuals were identified. The 26 associated funerary objects include ceramic vessels.

Based on material culture, architecture, and site organization, the Jewett Gap site has been identified as an Upland Mogollon pueblo occupied between 1000-1150 A.D.

In 1986, human remains representing one individual from the Eva Faust site were recovered during legally authorized excavations and collections conducted by Dr. James Neely, University of Texas-Austin. These human remains are currently curated at the Western New Mexico State University Museum. No known individual was identified. No associated funerary objects were present.

Based on material culture and site organization, the Eva Faust site has been identified as a Mogollon pithouse village with surface rooms occupied between 600–1100 A.D.

In 1955, human remains representing three individuals were recovered from sites LA 2947 and LA 2948 during legally authorized excavations and collections conducted by Edwin N. Ferdon of the Museum of New Mexico. These human remains are currently curated at the Museum of New Mexico. No known individuals were identified. The two associated funerary objects include ceramic vessels.

Based on material culture and site organization, LA 2947 and LA 2948 have been identified as two Upland Mogollon pithouses occupied between 200-1000 A.D.

In 1971 and 1972, human remains representing a minimum of 49 individuals were recovered from sites LA 4987, LA 4988, LA 6082, and LA 6083 during legally authorized excavations and collections conducted by David W. Kayser of the Museum of New Mexico. These human remains are currently curated at the Museum of New Mexico. No known individuals were identified. The 60 associated funerary objects include ceramic vessels, a stone bowl, and stone tools.

Based on material culture, architecture, and site organization, LA 4987, LA 4988, LS 6082, and LA 6083 have been identified as Upland Mogollon pueblos and a pithouse occupied between 1150-1300 A.D.

In 1973, human remains representing a minimum of four individuals were removed without a permit from an unnamed site northwest of Apache Creek by Mr. Brad Triplehorn. Mr. Triplehorn then donated these human remains to the Ohio Historical Society, where they are currently curated. No known individuals were identified. The 12 associated funerary objects include ceramic sherds and animal bone.

Based on material culture, this site has been identified as an Upland Mogollon site occupied between 600-1300 A.D.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of the Upland Mogollon sites listed above with historic and present-day Puebloan cultures. Oral traditions presented by representatives of the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Zuni support cultural affiliation with these Upland Mogollon sites in this portion of southwestern New Mexico.

Based on the above mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 162 individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 319 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Zuni.

This notice has been sent to officials of the the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave., SW, Albuquerque, NM 87102; telephone: (505) 842–3238, fax (505) 842–3800, before August 21, 1998. Repatriation of the human remains and associated funerary objects to the the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Zuni may begin after that date if no additional claimants come forward.

Dated: June 16, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–19536 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the South Dakota

State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center and Office of the State Archeologist of Iowa professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation.

In 1934, human remains representing one individual likely to have been recovered from the Evart's Village site (39WW204), Walworth County, SD during Works Project Administration road construction. No known individual was identified. The two associated funerary objects consist of a white glass pony bead and a rifle bullet, identified as possibly a .44-60 calibre Peabody, Remington, or Sharps.

In 1990, these human remains were found in the collections of the Conger House Museum in Washington, IA and transferred to the Office of the State Archeologist of Iowa. Museum documentation suggests these remains were recovered from the Evart's Village site on Fred Brazel's land near Evart, SD and given to his brother-in-law, Thomas Royster of Muscatine, IA. Mr. Royster may have donated these remains to the Conger House Museum, as Washington, IA is near Muscatine. In 1952, an interview with Mrs. Fred Brazel revealed that these human remains were possibly interred as a primary flexed or secondary bundle burial, placed face up on top of a layer of cut willow twigs.

Based on skeletal morphology and associated funerary objects, these individuals have been determined to be Native American. Based on the associated funerary objects, manner of interment, and geographical location, the Evart's Village site has been identified as a post–1770 Arikara or Mandan village. Consultation with representatives of the Three Affiliated Tribes indicates there were Arikara and Mandan villages in this area of South Dakota during the post contact period.

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation.

This notice has been sent to officials of the Three Affiliated Tribes of the Fort Berthold Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, South Dakota State Archaeological Reserch Center, P.O. Box 1257, Rapid City, SD 57709-1257; telephone: (605) 394–1936, before August 22, 1999. Repatriation of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation may begin after that date if no additional claimants come forward.

Dated: July 6, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–19538 Filed 7–21–98; 8:45 am]

BILLING CODE 4310–70–F

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

In the Matter of Virginia Electric and Power Company; Surry Power Station, Units 1 and 2; Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Facility Operating License No. DPR–32 and Facility Operating License No. DPR–37, which authorize operation of the Surry Power Station, Units 1 and 2. The licenses provide that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Surry County, Virginia.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) Section 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area in which such material is handled, used, or stored. Sections 70.24 (a)(1) and (a)(2) specify detection and sensitivity requirements that these monitors must meet. Section 70.24(a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Section 70.24(a)(3) requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored, and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Section 70.24(b)(1) requires licensees to have a means by which to quickly identify personnel who have received a dose of 10 rads or more. Section 70.24(b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Section 70.24(c) exempts Part 50 licensees from the requirements of 10 CFR 70.24(c) for special nuclear material used or to be used in the reactor. Subsection 70.24(d) states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

On August 21, 1997, the NRC granted an exemption from the requirements of 10 CFR 70.24 reflecting the licensee's use of fuel enriched to 4.1 weight percent U235. By letter dated January 14, 1998, VEPCO requested a revised exemption from 10 CFR 70.24(a) based on the use of fuel enriched to 4.3 weight percent U235. The Commission has reviewed the licensee's submittal and has determined that inadvertent criticality is not likely to occur in special nuclear materials handling or storage areas at Surry Power Station, Units 1 and 2. The quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass.

The purpose of the criticality monitors required by 10 CFR 70.24 is to

ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. Although the staff has determined that such an accident is not likely to occur, the licensee has radiation monitors, as required by General Design Criteria 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to General Design Criterion 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption as revised is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants the following revised exemption:

The Virginia Electric and Power Company is exempt from the requirements of 10 CFR 70.24(a) for the Surry Nuclear Power Station, Unit 1 and Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this revised exemption will have no significant impact on the quality of the human environment (63 FR 38196).

This revised exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of July 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–19539 Filed 7–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; R.E. Ginna Nuclear Power Plant; Environment Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–18, issued to Rochester Gas and Electric Corporation (the licensee), for operation of the R.E. Ginna Nuclear Power Plant, located in Wayne County, New, York.

Identification of the Proposed Action

The proposed action would modify the spent fuel pool (SFP) by replacing the three Region 1 rack modules with seven new borated stainless steel rack modules scheduled for implementation in 1998. Six new peripheral modules would be added at some future date. Two of the seven new modules planned to be installed in 1998 would be designated as part of Region 2, effectively increasing the Region 2 area. The other five new modules would compose Region 1, resulting in a total of 294 storage positions in Region 1. Region 2, with 1075 storage positions, would consist of three rack types, Type 1, Type 2, and Type 4. Type 1 cells are the Boraflex cells that form Region 2 for the existing license. Two racks of Type 2 cells, containing borated stainless steel (BSS) absorber plates, would be added to increase the storage capacity of Region 2. In addition, the capacity of Region 2 could be increased in the future by the addition of Type 4 racks, which also contain BSS absorber plates. The amendment would also increase the boron concentration from 300 ppm to 2300 ppm.

The proposed action is in accordance with the licensee's application for amendment dated March 31, 1997, as supplemented June 18, 1997, October 10, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 20, 1998, April 23, 1998, April 27, 1998, and May 8, 1998.

The Need for the Proposed Action

The proposed action would modify the spent fuel pool to accommodate storage of spent fuel until the expiration of the Ginna Station license in 2009. The current configuration of the Ginna spent fuel storage pool consists of two regions. Region 1 consists of stainless steel racks with 176 storage locations in a checker board pattern. Region 2 consists of stainless steel racks with boraflex and with 840 storage locations. This provides a total of 1016 storage locations. The proposed amendment would replace the Region 1 racks with borated stainless steel racks. Two locations are proposed in Region 1, one with borated stainless steel that would accommodate 187 storage locations and one with borated stainless steel in a checker board pattern that would accommodate 292 storage locations. This would provide a total of 1319 storage locations which would provide enough storage locations for storage of spent fuel beyond the expiration of the license in 2009.

Environmental Impacts of the Proposed Action

Radioactive Waste Treatment

The Ginna Nuclear Power Plant uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are evaluated in the Final Environmental Statement (FES) dated December 1973. The proposed rerack will not involve any change in the waste treatment systems described in the FES.

Gaseous Radioactive Wastes

The only radioactive gas of significance that could be attributable to storing additional spent fuel assemblies for a longer period of time would be the noble gas radionuclide Krypton-85 (Kr-85). Experience has demonstrated that after spent fuel has decayed 4 to 6 months, there is no longer a significant release of fission products, including Kr-85, from stored spent fuel containing cladding defects. The licensee has stated that the Kr-85 noble gases are not normally released from the Auxiliary Building on a continuous basis and enlarging the storage capacity of the SFP will have no effect on the average annual quantities of Kr-85 released to the atmosphere.

Iodine-131 released from spent fuel assemblies to the SFP water will not be significantly increased due to the expansion of the fuel storage capacity since the Iodine-131 inventory in the fuel will decay to negligible levels between refuelings.

The amount of tritium in the SFP water will not be affected by the proposed changes. Most of the tritium in the SFP water results from activation of boron and lithium in the primary coolant. A relatively small amount of tritium is produced during reactor operation by the fission process within the reactor fuel. The subsequent diffusion of the tritium through the fuel and cladding represents a small contribution to the total amount of tritium in the SFP water. Tritium releases from the fuel assemblies occur mainly during reactor operation and, to a limited extent, shortly after shutdown. Thus, expanding the SFP capacity will not increase the tritium activity in the SFP.

Most airborne releases of tritium and iodine from nuclear power plants result during refuelings from evaporation of reactor coolant, which contains tritium and iodine in higher concentrations than in the SFP. The storage of additional spent fuel assemblies in the SFP is not expected to increase the SFP

bulk water temperature above the 150 °F used in the design analysis and, therefore, evaporation rates from the SFP are not expected to increase. Consequently, it is not expected that there will be any significant change in the annual release of tritium or iodine as a result of the proposed modifications from that previously evaluated in the FES.

Solid Radioactive Wastes

Spent resins are generated by the spent fuel pool purification system. These spent resins are replaced every 2 to 3 years and are disposed of as solid radioactive waste. The licensee will clean the floor of the SFP using a vacuum system before any work is done and after each of the old Region I fuel rack modules is removed. The licensee also plans on vacuuming the old Region I fuel rack modules before removal from the SFP. The licensee will do this in order to remove as much of the source term as possible (to minimize personnel dose), to minimize the generation of spent resins, and to ensure visual clarity in the SFP to facilitate diving operations and SFP rack change out. On the basis of experience gained following the 1984–1985 SFP modification, the licensee concludes that the additional fuel storage made possible by the increased storage capacity will not result in a significant change in the generation of solid radwaste (in the form of spent resins).

Prior to removal from the SFP, the three Region I fuel rack modules will be vacuumed and hydrolazed to remove any loose crud from the modules. The fuel rack modules will then be decontaminated to less than 200 mrem/hr and will be either shipped offsite intact or will be cut up and shipped offsite. If shipped intact, the modules will be dried and bagged first. Otherwise, the modules will be cut up into small enough pieces to fit into "low specific activity" radwaste boxes. The licensee has stated that the shipping containers and procedures will conform to all applicable regulations set forth by the U.S. Department of Transportation (DOT) as well as the requirements of any State DOT office through which the shipment may pass and the requirements of the American Association of State Highway and Transportation Officials.

Liquid Radioactive Wastes

It is not expected that there will be a significant increase in the liquid release of radionuclides from the plant as a result of the modifications. The SFP cooling and purification system operates as a closed system. The SFP demineralizer resin removes soluble radioactive materials from the SFP water. A small increase in activity on the filters and demineralizers may occur during the installation of the new racks, due to the more frequent fuel shuffling and underwater hydrolazing of the old racks during removal. However, the amount of radioactivity released to the environment as a result of the proposed reracking is expected to be negligible.

Occupational Dose Consideration

Operating experience has shown that area dose rates in the vicinity of the SFP are 1.0 to 2.0 mrem/hr, regardless of the quantity of fuel stored in the SFP. These dose rates may increase slightly during refueling operations due to crud deposits spalling from spent fuel assemblies and to activities carried into the pool from the primary system, resulting in slightly higher concentrations of radionuclides in the SFP. However, licensee experience to date has not indicated a major increase in dose rates as a consequence of refueling. The licensee has calculated the expected dose rates at locations of interest outside the concrete SFP walls to determine how the increase in fuel capacity will affect the adjacent area dose rates. The licensee has determined that the resulting dose rates are well within the Radiation Zone II limits (2.5 mrem/hr) for all passageways adjacent to the SFP which can be accessed by personnel.

The total collective occupational dose to plant workers as a result of the reracking operation is estimated to be between 8 and 12 person-rem. When the licensee performed an SFP rerack in 1984–1985, the resulting total collective occupational dose received was 14 person-rem. The licensee plans on incorporating the lessons learned from this earlier reracking operation to reduce overall doses during the upcoming reracking operation. The upcoming reracking operation will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles. On the basis of its review of the Ginna proposal, the staff concludes that the Ginna SFP rack modification can be performed in a manner that will ensure that doses to workers will be maintained ALARA.

Accident Considerations

In its application, the licensee evaluated the possible consequences of six hypothetical accidents involving fuel in the SFP. Because the licensee uses single failure proof cranes for the lifting of heavy loads in the vicinity of the SFP, four of these accidents are deemed not plausible. The licensee evaluated the other two hypothetical accidents—the fuel handling accident and the tornado missile accident-to determine the thyroid and whole-body doses at the Exclusion Area Boundary, Low Population Zone (LPZ), and Control Room. The proposed reracking of the Ginna SFP will not affect any of the assumptions or inputs used in evaluating the dose consequences of either of these hypothetical accidents.

The NRC staff reviewed the licensee's analysis and performed confirmatory calculations to check the acceptability of the licensee's doses. The staff's calculations confirmed that the thyroid doses at the EAB, LPZ, and Control Room from either a fuel handling accident or a tornado missile accident meet the acceptance criteria and that the licensee's calculations are acceptable. The results of the staff's calculations are presented in the Safety Evaluation to be issued with the license amendment.

In summary, the proposed action will not increase the probability or consequences of accidents, no changes are being made to radioactive waste treatment systems or in the types of any radioactive effluents that may be released offsite, and the proposed action will not result in a significant increase in occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the R.E. Ginna Nuclear Power Plant dated December 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 19, 1998, the staff consulted with Hal Brotie of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 31, 1997, as supplemented by letters dated June 18, 1997, October 10, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 20, 1998, April 23, 1998, April 27, 1998, May 8, and May 22, 1998, which are 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 Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 16th day of July 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–19541 Filed 7–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 20, 27, August 3, and 10, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 20

Tuesday, July 21

1:30 p.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

3:00 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of July 27—Tentative

Wednesday, July 29

2:00 p.m.—Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Glenn Tracy, 301–415–1725)

4:00 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of August 3—Tentative

Thursday, August 6

10:00 a.m.—Briefing on Recent Research Program Results and Core Capabilities (Public Meeting) (Contact: Lloyd Donnelly, 301–415–5828)

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of August 10—Tentative

Tuesday, August 11

2:00 p.m.—Briefing on 10 CFR Part 70—Proposed Rulemaking, "Revised Requirements for the Domestic Licensing of Special Nuclear Material (Public Meeting) (Contact: Elizabeth Ten Eyck, 301–415–7212)

Wednesday, August 12,

2:00 p.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–425–5790)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

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 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: July 17, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–19634 Filed 7–20–98; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 1998, of 24 rescission proposals and eight deferrals contained in two special messages for FY 1998. These messages were transmitted to Congress on February 3 and February 20, 1998.

Rescissions (Attachments A and C)

As of July 1, 1998, 24 rescission proposals totaling $20 million had been transmitted to the Congress. Congress approved 21 of the Administration's rescission proposals in P.L. 105–174. A total of $17.3 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1998, $2,452 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1998.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 7004, Wednesday, February 11, 1998

63 FR 10076, Friday, February 27, 1998

Jacob J. Lew,

Acting Director.

ATTACHMENT A—STATUS OF FY 1998 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	20.1
Rejected by the Congress	.....
Amounts rescinded by P.L. 105–174, the FY 1998 Supplemental Appropriations and Rescissions Act	−17.3
Currently before the Congress	2.8

ATTACHMENT B—STATUS OF FY 1998 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	4,833.0
Routine Executive releases through July 1, 1998 (OMB/Agency releases of $2,381.6 million, partially offset by cumulative positive adjustment of $0.3 million)	−2,381.3
Overturned by the Congress	.....
Currently before the Congress	2,451.7

BILLING CODE 3110–01–U

ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of July 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R98-1		223	2-20-98	223	4-28-98	223	P.L. 105-174
Animal and Plant Health Inspection Service								
Salaries and expenses	R98-2		350	2-20-98	350	4-28-98	350	P.L. 105-174
Food Safety and Inspection Service								
Salaries and expenses	R98-3		502	2-20-98	502	4-28-98	502	P.L. 105-174
Grain Inspection, Packers and Stockyards Administration								
Salaries and expenses	R98-4		38	2-20-98	38	4-28-98	38	P.L. 105-174
Agricultural Marketing Service								
Marketing services	R98-5		25	2-20-98	25	4-28-98	25	P.L. 105-174
Farm Service Agency								
Salaries and expenses	R98-6		1,080	2-20-98	1,080	4-28-98	1,080	P.L. 105-174
Natural Resources Conservation Service								
Conservation operations	R98-7		378	2-20-98	378	4-28-98	378	P.L. 105-174
Rural Housing Service								
Salaries and expenses	R98-8		846	2-20-98	846	4-28-98	846	P.L. 105-174
Food and Nutrition Service								
Child nutrition programs	R98-9		114	2-20-98	1/			
Forest Service								
National forest systems	R98-10		1,094	2-20-98	1,094	4-28-98	1,094	P.L. 105-174
Reconstruction and construction	R98-11		30	2-20-98	30	4-28-98	30	P.L. 105-174
Forest and rangeland research	R98-12		148	2-20-98	148	4-28-98	148	P.L. 105-174
State and private forestry	R98-13		59	2-20-98	59	4-28-98	59	P.L. 105-174
Wildland fire management	R98-14		148	2-20-98	148	4-28-98	148	P.L. 105-174

ATTACHMENT C
Status of FY 1998 Rescission Proposals - As of July 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R98-15		1,188	2-20-98			1,188	P.L. 105-174
Oregon and California grant lands	R98-16		2,500	2-20-98			2,500	P.L. 105-174
Bureau of Reclamation								
Water and related resources	R98-17		532	2-20-98	1/			
Bureau of Mines								
Mines and minerals	R98-18		1,605	2-20-98			1,605	P.L. 105-174
United States Fish and Wildlife Service								
Construction	R98-19		1,188	2-20-98			1,188	P.L. 105-174
National Park Service								
Construction	R98-20		1,638	2-20-98			1,638	P.L. 105-174
Bureau of Indian Affairs								
Construction	R98-21		737	2-20-98			737	P.L. 105-174
DEPARTMENT OF TRANSPORTATION								
Office of the Secretary								
Payments to air carriers	R98-22		2,499	2-20-98			2,499	P.L. 105-174
Payments to air carriers (Airport and airway trust fund)	R98-23		1,000	2-20-98			1,000	P.L. 105-174
Maritime Administration								
Maritime guaranteed loan (Title XI) program account	R98-24		2,138	2-20-98	1/, 2/			
TOTAL, RESCISSIONS		0	20,060		4,921		17,276	

1/ Funds were never withheld from obligation.

2/ GAO's report to the Congress, dated May 11, 1998, indicated that agency officials stated that funds were being withheld from obligation, but not on an apportionment schedule. Subsequent discussions between OMB and agency officials confirm that there has been no withholding of funds. Rather, the lower demand in recent years for these loan guarantees has resulted in large available balances. For this reason, no withholding was required, either by OMB or by the agency.

[FR Doc. 98-19430 Filed 7-21-98; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1998 Deferrals - As of July 1, 1998
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-98
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D98-1	2,330,098		2-3-98	1,423,435			328	906,991
International military education and training	D98-2	43,300		2-3-98	41,900				1,400
Foreign military financing program	D98-3	1,483,903		2-3-98	863,253				620,650
Foreign military financing loan program	D98-4	60,000		2-3-98	0				60,000
Foreign military financing direct loan financing account	D98-5	657,000		2-3-98	0				657,000
Agency for International Development									
International disaster assistance, Executive	D98-6	135,697		2-3-98	20,250				115,447
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D98-7	115,640		2-3-98	32,782				82,858
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D98-8	7,369		2-3-98					7,369
TOTAL, DEFERRALS		**4,833,007**	**0**		**2,381,620**			**328**	**2,451,714**

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. Court Orders Affecting Retirement Benefits, requires former spouses of Federal employees to provide specific information needed for OPM to make court-ordered benefit payments. This information is needed to identify affected employees and to certify that the court-order remains in effect.

Approximately 19,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 30 minutes to apply. The annual burden is 9,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before August 21, 1998.

ADDRESSES: Send or deliver comments to—

Mary Ellen Wilson, Acting Chief, Retirement Policy Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 4351, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget & Administrative Services Division, (202) 606–0623, U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–19496 Filed 7–21–98; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Information Based Indicia Program (IBIP)

AGENCY: Postal Service.

ACTION: Announcement of public meeting on IBIP.

SUMMARY: The Postal Service will be hosting an IBIP Public Meeting. The purpose of the IBIP Public meeting is to provide an update of latest program activities. It will be held on Thursday, September 3, 1998, at the Renaissance Washington, D.C. Hotel, 999 9th Street, NW, Washington, D.C. 20001–4427.

DATES: To register attendance at the September 3rd meeting, call Dana Brown at (202) 268–6794. Reservations may be made until August 14, 1998; however, we encourage you to call earlier as there is limited seating available.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–19471 Filed 7–21–98; 8:45 am]

BILLING CODE 7710–12–U

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 29, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Proposed responses to letters to the President proposing an amendment to the Railroad Retirement Act to permit employees to retire with an unreduced annuity under the RRA at age 55 after 30 years of service, whichever comes first.

(2) Employee Suggestion 1448 (Addition of agency's website address to letterhead stationary).

(3) Coverage Determinations:

A. Railroad Ventures, Inc.

B. Decision on Reconsideration—Huron Transportation Group, Huron Development and Construction, RailAmerica Services Corporation.

(4) Revised Form HA–1. Appeal under the Railroad Retirement Act or Railroad Unemployment Insurance Act.

(5) Year 2000 Issues.

Portion closed to the public:

(A) Request to Establish a Permanent Lead Specialist in the Staffing Section of the Bureau of Personnel.

(B) Request to Establish a GS–13 Auditor Position and Abolish a GS–12/11/09/07 Auditor Position in the Audit and Compliance Section.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 17, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–19617 Filed 7–20–98; 11:11 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23316; 812–11002]

Allmerica Investment Trust, et al; Notice of Application

July 15, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, and from certain disclosure requirements under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and amend subadvisory agreements without receiving shareholder approval, and grant relief from certain disclosure requirements regarding advisory fees paid to the subadvisers.

APPLICANTS: Allmerica Investment Trust ("Trust") and Allmerica Financial Investment Management Services, Inc. ("Adviser").[1]

FILING DATE: The application was filed on February 10, 1998 and amended on July 2, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service.

[1] Applicants request relief with respect to future series of the Trust, and any other registered open-end management investment company advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions of the application.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 440 Lincoln Street, Worcester, Massachusetts 01653.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust is composed of 14 series ("Funds"), each of which has its own investment objectives and policies. Shares of each Fund may be purchased only by the separate accounts established by First Allmerica Financial Life Insurance Company or Allmerica Financial Life Insurance and Annuity Company for the purpose of funding variable annuity contracts and life insurance policies.

2. The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to the Trust and the Funds under an investment advisory agreement ("Advisory Agreement"). The adviser is responsible for the management of the Trust's day-to-day business affairs, has general responsibility for the management of the investments of the Funds, and performs administrative and management services for the Trust. In return for providing these services, the Adviser receives a fee from each Fund, computed as a percentage of net assets.

3. Specific portfolio management for each Fund is performed by investment advisers registered under the Advisers Act that serve as investment subadvisers to the Funds ("Subadvisers"). Currently each Fund has a single Subadviser although the Adviser is authorized to select multiple Subadvisers for each Fund. All Subadvisers must be approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the Trust ("Independent Trustees"), the Adviser or the Subadvisers, and by shareholders. The Adviser pays each Subadvier out of the fee the Funds pay to the Adviser.

4. In evaluating prospective Subadvisers, the Adviser considers, among other factors, each Subadviser's management experience, investment techniques and staffing. The Adviser recommends to the Board whether investment advisory agreements with Subadvisers ("Subadvisers Agreements") should be renewed, modified or terminated.

5. Applicants request an order to permit them to enter into and materially amend Subadvisory Agreements without receiving shareholder approval. The requested relief will not extend to a Subadviser that is an "affiliated person" of either the Trust or the Adviser, as defined in section 2(a)(3) of the Act, other than by reason of serving as a Subadviser to one or more of the funds ("Affiliated Subadviser"). Applicants also request an exemption to permit the Funds to disclose (both as a dollar value and as a percentage of a Fund's net assets): (1) aggregate fees paid to the Adviser; and (2) aggregate fees paid to Subadvisers other than Affiliated Subadvisers ("Limited Fee Disclosure"). For any fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

Shareholder Voting

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except under a written contract which has been approved by the vote of a majority of the outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request relief under section 6(c) from sections 15(a) of the act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisers Agreements without shareholder approval.

3. Applicants state that investors in a Fund are, in effect, electing to have the Adviser select one or more Subadvisers best suited to achieve that Fund's investment objectives. Part of the investors' investment decision is a decision to have such selections made by a professional management organization, such as the Adviser, with substantial experience in making such evaluations and selections (or in recommending the termination of Subadvisers, as deemed appropriate by the Adviser). Thus, the role of the Subadvisers from the perspective of the investors, is comparable to that of the individual portfolio managers employed by other investment company investment advisory firms. Applicants thus assert that the requested relief would allow the Adviser to more efficiently perform its principal functions of selecting, monitoring, and making changes in the role of the Subadvisers.

4. Applicants also state that because investors are relying on the Adviser for investment results and overall management services, it is the agreement with the Adviser over which a Fund's shareholders should exercise control. If the relief requested is granted, the Advisory Agreement between the Trust and the Adviser will continue to be fully subject to section 15 of the Act and rule 18f–2.

Fee Disclosure

5. Form N–1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A (and after the effective date of the amendments to Form N–1A, items 3, 6(a)(1)(iii), and 15(a)(3)), require disclosure of the method and amount of the investment advisers, compensation.

6. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

7. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee will be increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment

adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

8. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

9. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

10. Applicants request relief under section 6(c) from the above disclosure requirements to provide Limited Fee Disclosure. Applicants argue that, with the information provided in the Limited Fee Disclosure, investors will have adequate information to compare the advisory fees of the Funds with those of other funds. Applicants believe that, while the amount of the total fees retained by the Adviser is relevant to the investors' determination of the value of the Adviser's services, the specific portion of the total fee paid to an individual Subadviser provides no useful information since the investors have engaged the Adviser to select, monitor, and compensate the Subadvisers. Applicants also believe that because some investment advisers price their services based on "posted" fee rates, the Adviser, without the requested relief, may only be able to obtain a specific Subadviser's services by paying higher fee rates than it would otherwise be able to negotiate if the rates paid were not disclosed publicly.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund as described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Fund, (or, in the case of the Trust, pursuant to voting instructions provided by contract owners with assets allocated to any separate account for which a Fund serves as a funding medium), or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2, below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectuses the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility to oversee Subadvisers and to recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to the Trust and its Funds and subject to the review and approval of the Board, will: set the overall investment strategies of the Funds; recommend Subadvisers; when appropriate, allocate and reallocate the assets of a Fund among Subadvisers; monitor and evaluate the investment performance of the Subadvisers; and ensure that the Subadvisers comply with the investment objectives, policies, and restrictions of the respective Funds.

4. A majority of the Board will continue to be Independent Trustees, and the nomination of new or additional Independent Trustees will continue to be placed within the discretion of the then existing Independent Trustees.

5. The Adviser will not enter into a Subadvisory Agreement for a Fund with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund (or in the case of the Trust, pursuant to voting instructions provided by contract owners with assets allocated to any separate account for which the Fund serves as a funding medium).

6. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of meetings of the Board, that the change of Subadviser is in the best interests of the Fund and its shareholders (or in the case of the Trust, of the contract owners with assets allocated to any separate account for which the Fund serves as a funding medium), and does not involve a conflict of interest from which the Adviser or the Affiliated subadviser derives an inappropriate advantage.

7. No director, Trustee or officer of the Trust or the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, Trustee, or officer) any interest in a Subadviser except for ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within ninety (90) days of the hiring of any new Subadviser the affected Fund will furnish its shareholders with all information about the new Subadviser or Subadvisory Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser or any proposed material change in the Subadvisory Agreement of a Fund. The Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Items 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure. The Trust will ensure that the information statement is furnished to contract owners with assets allocated to any separate account for which the Trust serves as a funding medium.

9. The Trust will disclose in its registration statement the Limited Fee Disclosure.

10. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be placed within the discretion of the Independent Trustees.

11. The Adviser will provide the Board, no less frequently than quarterly, information about the Adviser's profitability. An annual report also will be provided to Trustees which shall contain information about the Adviser's profitability calculated on a per-Fund basis. Such information will reflect the impact on profitability of the hiring or termination of any Subadvisers during the applicable quarter.

12. Whenever a Subadviser is hired or terminated, or a Subadvisory Agreement is materially amended (including any change in the fee paid to the Subadviser), the Adviser will provide the Board information showing the expected impact on the Adviser's

profitability. In addition to any other information the Board may request, the Adviser will provide information concerning the Adviser's profitability for the preceding quarter with respect to the relevant Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Joanathan G. Katz,

Secretary.

[FR Doc. 98–19497 Filed 7–21–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40204; File No. 4–208]

RIN 3235–AH51

Proposed Rulemaking Pursuant to Section 11A of the Securities Exchange Act of 1934 to Amend the Intermarket Trading System ("ITS") Plan To Link the PCX Application of the OptiMark System to the ITS System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing alternative amendments to the plan governing the operation of the Intermarket Trading System ("ITS Plan" or "Plan") that was approved pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934, as amended ("Exchange Act" or "Act"). The proposed amendments provide for the linkage of the Pacific Exchange, Inc. ("PCX") Application of the OptiMark System to the ITS System.

DATES: Comments should be submitted by August 21, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. 4–208; this file number should be included in the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Katherine A. England, Assistant Director, at (202) 942–0154; Elizabeth Prout Lefler, Special Counsel, at (202) 942–0170; Heather A. Seidel, Attorney, at (202) 942–4165; or Christine Richardson, Attorney, at (202) 942–0748, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing, on its own initiative pursuant to Rule 11Aa3–2 under the Exchange Act,[1] alternative amendments to the ITS Plan[2] to link the PCX Application of the OptiMark System ("PCX Application") to the ITS System. Facilitation of this linkage is intended to further the statutory goals of efficient execution of securities transactions, opportunities for best execution of customer orders, as well opportunities for investors' order to be executed without the participation of a dealer. The Commission is proposing these alternative amendments only after the ITS Operating Committee ("ITSOC") was unsuccessful in reaching agreement on Plan amendments to implement the linkage with the PCX Application.[3] The Commission is publishing this proposal for comment from interested persons.

I. Background

A. The ITS System

Section 11A(a)(2) of the Exchange Act, adopted by the Securities Acts Amendments of 1975 ("1975 Amendments"),[4] directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system ("NMS") for securities in accordance with the Congressional findings and objects set forth in Section 11A(a)(1) of the Act. Among these findings and objectives is the "linking of all markets for qualified securities through communication and data processing facilities."[5]

On January 26, 1978, the Commission issued a statement on the national market system calling for, among other things, the prompt development of comprehensive market linkage and order routing systems to permit the efficient transmission of orders among the various markets for qualified securities, whether on an exchange or over-the-counter.[6] In particular, the Commission stated that an intermarket order routing system was necessary to "permit orders for the purchase and sale of multiply-traded securities to be sent directly from any qualified market to another such market promptly and efficiently."[7] The Commission further stated that "[t]he need to develop and implement a new intermarket order routing system to link all qualified markets could be obviated if participation in the ITS market linkage currently under development were made available on a reasonable basis to all qualified markets and if all qualified markets joined that linkage."[8]

As requested by the Commission, in March 1978, various exchanges[9] filed jointly with the Commission a "Plan for

[1] Rule 11Aa3–2 (17 CFR 240.11Aa3–2) establishes procedures for initiating or approving amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) of Rule 11Aa3–2 states that the Commission may propose amendments to an effective national market system plan by publishing the text thereof together with a statement of purpose of the amendments. Paragraph (c)(2) requires the Commission to publish notice of any amendments initiated by the Commission and provide interested parties an opportunity to submit written comments. Further, Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule.

[2] ITS is a communications and order routing network linking eight national securities exchanges and electronic over-the-counter ("OTC") market operated by the National Association of Securities Dealers, Inc. ("NASD"). ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. The ITS Plan governs the use of ITS. Signatories to the ITS Plan are the American Stock Exchange, Inc. ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Partcipants").

[3] Section 4(c) of the ITS Plan requires a unanimous vote of approval in order to amend the Plan. The full ITSOC met on June 3, 1998, to vote on amendments proposed by the PCX that are substantially similar to one alternative being proposed today by the Commission. The PCX proposed a "Description Amendment" and a "Formula Amendment." The NYSE provided alternative proposed language but did not formally propose the language amendments or seek a vote on its language. The ITSOC members were divided on the PCX's amendments. The amendments were not approved.

[4] Pub. L. No. 94–29 (June 4, 1975).

[5] Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[6] Exchange Act Release No. 14416 (January 26, 1978) ("1978 Statement"), at 26, 43 FR 4354, 4358. Previously, on June 23, 1977, the Commission had indicated that a national market system would include those "regulatory and technological steps [necessary] to achieve a nationwide interactive market system." *See* Exchange Act Release No. 13662 (June 23, 1977), at 20, 42 FR 33510, 33512.

[7] 1978 Statement, *supra*, note 6, at 4358.

[8] In this connection, the Commission specifically indicated that "qualified markets" would include not only exchanges but OTC market makers as well. *Id.*

[9] The exchanges involved were Amex, BSE, NYSE, PSE (now the PCX), and Phlx.

the Purpose of Creating and Operating an Intermarket Communications Linkage," now known as the ITS Plan.[10] On April 14, 1978, the Commission, noting that ITS might provide the basis for an appropriate market linkage facility in a national market system, issued a provisional order, pursuant to Section 11A(a)(3)(B) of the Act,[11] authorizing the filing exchanges (and any other self-regulatory organization ("SRO") that agreed to become a participant in the ITS Plan) to act jointly in planning, developing, operating and regulating the ITS in accordance with the terms of the ITS Plan for a period of 120 days.[12]

The ITS Plan was approved on a permanent, indefinite basis on January 27, 1983.[13] It contains a number of market integrity provisions to provide for continuity of transaction prices among the various market centers. For example, the Plan includes a trade-through rule.[14] It also contains a block trade policy, that provides special rights to any market displaying the best national bid or offer when block-size transactions are occurring in another market.[15]

Furthermore, since its permanent approval, the NASD and CSE have been added as Participants to the Plan.[16]

[10] The ITS Plan is contained in File No. 4–208.

[11] 15 U.S.C. 78k–1(a)(3)(B).

[12] *See* Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. In authorizing the implementation of ITS, the Commission urged those SROs not yet ITS participants to participate in ITS. *Id.* at 7 n.15, 43 FR 17421. On August 11, 1978, the Commission extended ITS authority for an additional period of one year. *See* Exchange Act Release No. 15058 (August 11, 1978), 43 FR 36732. In the interim the ITS Plan had been amended to include the Midwest Stock Exchange ("MSE") as a participant. The MSE is now the CHX.

[13] *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[14] A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets affecting trades outside the best national quote.

[15] *See* ITS Plan, Section 8(d)(iii).

[16] On April 28, 1981, due to a reluctance of the ITS Participants, the Commission issued an order requiring the ITS Participants to implement an automated interface between CAES and ITS by March 1, 1982, limited to Rule 19c–3 securities, and to submit proposed amendments to the ITS Plan reflecting the inclusion of the NASD as an ITS Participant. *See* Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856 (April 28, 1981). On March 11, 1982 the Commission delayed the implementation date of the interface until May 1, 1982 and published its own proposed amendments to the ITS Plan. *See* Exchange Act Release No. 18536 (March 11, 1982), 47 FR 10658. Consequently, due to the inability of the ITS Participants to submit an amendment, on May 12, 1982, the Commission adopted its own amendments to the ITS Plan, providing for the inclusion of the NASD in ITS. *See* Exchange Act Release No. 18713 (May 12, 1982), 47 FR 20413.

Rule 19c–3 under the Act, as adopted, precludes exchange off-board trading restrictions from applying to securities listed after April 26, 1979. *See* Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125.

In April 1981, the ITS Plan was amended to provide for participation of the CSE in ITS via a manual interface between ITS and CSE's automated National Securities Trading System ("NSTS"). *See* Exchange Act Release No. 17702 (April 9, 1981). The Plan was later amended again to provide for automated interface between ITS and the CSE's NSTS. *See* Exchange Act Release No. 23365 (June 23, 1986), 51 FR 23865 (July 1, 1986).

B. Description of the PCX Application

The PCX application[17] is the computerized facility of the PCX that receives orders generated by the "OptiMark System",[18] a patented electronic matching system based on an optimization algorithm that, on a periodic "call" basis, processes certain qualifying expressions of trading interest called satisfaction profiles ("Profiles"), including Profiles created from the published quotations disseminated by the other participants at commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes ("CQS Profiles").[19] OptiMark is a screen-based trading service intended for use by PCX members and their customers. The OptiMark System will provide automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the PCX ("PCX Securities"). The OptiMark system will be used by PCX members, in addition to PCX's traditional floor facilities, to buy and sell PCX Securities.

The PCX Application will allow PCX members and their customers to submit anonymously from their computer terminals Profiles to the OptiMark System. At specified times during the trading day, the OptiMark System will conduct certain calculations against the Profiles to identify specific orders capable of execution (a "cycle").[20] All orders formulated by the OptiMark System will be executed automatically on the PCX, except to the extent that they are executed on other market centers through ITS.

[17] For a more detailed description of the OptiMark System, *see* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

[18] The OptiMark System was developed by OptiMark Technologies, Inc. ("OTI"), a computer technology firm located in Durango, Colorado.

[19] CQS Profiles are profiles created from the published quotations disseminated by the other Participants at commencement of the OptiMark System call reflecting the public best bid and offer prices and associated sizes. *See* Proposed ITS Plan Section 1(33A).

[20] Cycles would be based on a computer algorithm that is designed to measure and rank all relevant mutual satisfaction outcomes by matching individual coordinates from intersecting Buy Profiles and Sell Profiles. The matching algorithm of the OptiMark System is intended to compute optimal trade results from Users based on their different willingness to trade across a wide range of price and size.

II. Discussion

The Commission is proposing, on its own initiative as requested by PCX,[21] to amend the ITS Plan, pursuant to Rule 11Aa3–2(b)(2) and (c)(1) and the Commission's authority under Section 11A(a)(3)(B) of the Act,[22] to link the PCX Application of the OptiMark System to the ITS System. Specifically, the Commission is proposing two alternative ITS Plan amendments, each of which would incorporate definitions of basic terms and a description of ITS transactions resulting from the PCX Application ("PCX Description Amendment" and "NYSE Description Amendment"). In addition, the Commission is proposing two alternative amendments, each of which would establish a formula limiting the percentage of outgoing commitments to trade that can be sent from the PCX Application to ITS ("PCX Formula Amendment" and "NYSE Formula Amendment"). The proposed alternative amendments substantially reflect amendments presented by the PCX to the ITSOC on June 6, 1998, as well as amendments submitted to the ITSOC by the NYSE in response to PCX's proposed amendments.[23] The Commission has determined to take this action only after the ITS Participants, despite extended negotiations, have proven unable to come to agreement regarding the linkage of the PCX Application to the ITS System. The PCX Application will be ready to begin operations in September 1998. The Commission believes that this linkage will further the purposes of Section 11A of the Act[24] and the development of a NMS by promoting economically efficient execution of securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer.

The Commission believes that linkage of the PCX Application to the ITS System will provide a new and potentially more efficient way to match and execute trading interest. The PCX Application appears principally

[21] *See* Petition for Rulemaking to Amend the ITS Plan, from PCX and OptiMark, dated June 9, 1998 ("PCX Rulemaking Petition").

[22] 5 U.S.C. 78k–1(a)(3)(B).

[23] The alternative amendments being proposed by the Commission substantively reflect those amendments proposed by the PCX and the NYSE.

[24] 15 U.S.C. 78k–1.

designed to meet the demands of sophisticated portfolio managers and other market professionals implementing complex trading strategies. These market participants often require instantaneous access to the market, and desire to minimize the market impact of their transactions through the expression of varied trading interests on a confidential basis. At the same time, the PCX Application is designed to allow retail customers, through PCX members Users, to interact with institutional trading interests.

The Commission believes that PCX is entitled to modify its market place, subject to Commission approval, to provide a new, innovative trading system for listed securities. The PCX Application is likely to promote competition among market centers because it has the potential to attract new market participants and to increase order flow to the PCX. By attracting order flow, the PCX Application may provide a new and enhanced source of liquidity for investors that may lessen order flow to other less-automated exchanges. The linkage of the PCX Application to the ITS System should increase the ability of investor orders to interact directly with other investor orders. Moreover, the Commission believes that the linking of the PCX Application to the ITS System should benefit both institutional and retail investors insofar as their expressions of trading interest will be represented in the OptiMark System and should be more likely to result in executions.

The Commission has historically encouraged exchanges to integrate new data communications and trade execution mechanisms into their markets in furtherance of the development of the NMS.[25] The Commission, for example, approved the fully computerized NSTS of the Cincinnati Stock Exchange, the MAX and SuperMAX Systems of the CHX, the CAES operated by Nasdaq.[26] In fact, the PCX Application shares many of the characteristics of the CHX's Chicago Match System, which was approved by the Commission in 1994.[27] The Commission notes that both the NSTS and CAES are linked with the ITS System.

The PCX represented in its rule filling for the PCX Application that the PCX Application would be operated in a manner consistent with the PCX's intermarket price protection obligations under the ITS Plan.[28] The PCX Application would incorporate existing market interest from each of the ITS Participant markets in the form of CQS Profiles. All orders generated from a cycle priced inferior to the quotations of another ITS Participant market would executed on the PCX only upon submission of appropriate ITS commitments seeking to reach such better-priced interest. For orders representing matched coordinates from CQS Profiles and other Profiles, the PCX would send an ITS commitment reflecting each such order for execution on other market centers to which the OptiMark System is not directly linked. Under the PCX Description Amendment, an ITS commitment would be sent immediately following the matching of the Profiles. Under the NYSE Description Amendment, before an ITS commitment could be sent, the PCX Application would first be required to provide the PCX specialist with an opportunity to trade in place of the pending ITS commitment. Every ITS commitment would then be sent under the "give-up" (an identifying symbol) of the member User or the Designated Broker, by way of the traditional PCX linkage to the ITS, in the sequence in which orders are generated from the cycle. Thus, the Commission preliminarily believes that the linkage of the PCX Application to the ITS System may be accomplished in a manner fully consistent with the ITS Plan.

The Commission understands that certain ITS Participants believe that adoption of an amendment establishing a percentage formula is necessary in order to prevent the possibility that ITS, as used by the PCX members and their customers through the PCX Application, will be used as an automated order delivery device to obtain cost-free, non-member access to other market centers. The Participants considered two formulas, the PCX Formula and the NYSE Formula, in an attempt to provide a form of "back-end" protection that would serve as a prophylactic measure to address potential access concerns. The Commission is proposing these as alternative amendments. Although they differ in specifics, both the PCX Formula Amendment and the NYSE Formula Amendment would prevent, by establishing a numerical limit, the PCX Application's linkage to ITS from becoming an automated order delivery system to other market centers. The proposed percentage ceilings of each formula amendment vary depending on what types of trades are included in the formula.

A. Background to the PCX Application Amendment

The Commission approved the PCX's new facility called the PCX Application of the OptiMark System in September 1997.[29] With regard to ITS, the Commission notes that the PCX has consistently taken the position that no ITS Plan amendments are necessary before the PCX Application of the OptiMark System is implemented, but that after such implementation, the PCX Application would be monitored to ensure that no Plan violations occurred. This position was affirmed by six of the eight other ITS Participants when the issue was presented to the entire ITSOC for deliberation on December 11, 1997. Two Participants, the NYSE and Amex, abstained from voting. Despite the results of the ITSOC vote, the NYSE continued to express its belief that the PCX Application requires a Plan amendment that includes certain specific protections to ensure that the PCX Application will not be used in an improper manner. The NYSE also

[25] In 1982, when recognizing the Cincinnati Stock Exchange's NSTS as a permanent program, the Commission stated:

In mandating the development of a NMS, Congress expressly stated that "[n]ew data processing and communications techniques create the opportunity for more efficient market operations." . . . In carrying out Congress' mandate, the Commission has taken an evolutionary approach by encouraging the securities industry to take the primary initiative in fashioning trading mechanisms which are consistent with the goals of a NMS. The Commission believes that, as a general matter, the industry has responded well to changing economic and technological demands by attempting to integrate state of the art data processing and communications technology to develop many new trading systems which have advanced the objectives of a NMS. In this respect, the Commission believes that ITS, the NASD's [National Association of Securities Dealers'] Computer Assisted Execution System ("CAES") and the NSTS represent constructive approaches to integrating trading in physically dispersed locations. (citations omitted)

Exchange Act Release No. 19315 (December 9, 1982), 47 FR 56236 (December 15, 1982).

[26] *See, e.g.*, Exchange Act Release No. 19315 (Dec. 9, 1982), 47 FR 56236 (Dec. 15, 1982) (Commission approval to terminate the NSTS as an experimental program and extend its duration for an indefinite period of time); Exchange Act Release No. 12451 (May 14, 1976), 41 FR 20932 (May 21, 1976) (Commission approval of the MAX system to operate on a permanent basis); Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069 (July 21, 1993) (Commission approval to operate the SuperMAX system on a permanent basis); Exchange Act Release No. 17601 (March 4, 1981), 46 FR 16171 (March 11, 1981) (Commission notice of the NASD filing of proposed rule change for the establishment of CAES); Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856 (April 28, 1981) Commission order to implement an automated interface between the ITS and the CAES); and Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413 (May 12, 1982) (implementing ITS/CAES interface and operations).

[27] Exchange Act Release No. 35030 (November 30, 1994), 59 FR 63141 (December 7, 1994). The PCX Application differs from Chicago Match in that it is a periodic, rather than a unitary, call market.

[28] *See* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

[29] *Id.*

disagreed with the implication that the ITSOC has the policy-making authority to interpret provisions of the ITS Plan.

Notwithstanding the NYSE's position, the PCX continued to believe that an amendment to the ITS Plan prior to the implementation of the PCX Application was not necessary, however, the PCX indicated that, to the extent that certain prophylactic protections were deemed necessary by the ITSOC, the PCX would submit for ITSOC consideration a description amendment, as well as a formula amendment. On June 3, 1998, the ITSOC met to consider PCX's proposed amendments to the ITS Plan regarding the PCX Application of the OptiMark System. The first amendment, the PCX Description Amendment, contained a definition of basic terms and a description of ITS transactions resulting from the PCX Application. The second amendment, the PCX Formula Amendment, contained a prophylactic protection in the form of a percentage formula to prevent any potential misuse of the PCX Application. Neither amendment was approved. The NYSE also submitted its own version of an NYSE Description Amendment and as NYSE Formula Amendment; however, these amendments were not presented for a vote to the ITSOC. As a result of the ITSOC vote, the Commission, on its own initiative, is proposing in substantially similar form, both the PCX and NYSE Description Amendments, as well as the PCX and NYSE Formula Amendments, in order to link the PCX Application to the ITS System.

B. Description of the ITS Amendments

The Commission proposes to add two new terms to Section 1, the "PCX Application" and the "PCX Application Module," in subsections 33(a) and 33(b) respectively. Both the PCX and NYSE Description Amendments propose to add the term, "PCX Application," which refers to the computerized facility of the PCX (as defined in PCX Rule 15.1) that will receive orders generated by the OptiMark System. Specifically, Section 1(33A) provides that the PCX would process orders received by the PCX Application to permit: (1) Execution on PCX of orders that reflect a match between contra-side non-CQS Profiles; and (2) transmission to ITS of those orders reflecting a match between a non-CQS Profile and a CQS Profile. The two proposed definitions of "PCX Application" are similar except for the method by which orders reflecting a match between a non-CQS Profile and a CQS Profile would be transmitted to ITS. The PCX Application would not become an ITs Participant under either proposed definition.

Both the PCX and NYSE Description Amendment provide for identical definitions of "PCX Application Module" to be added to the Plan. "PCX Application Module"' refers to the computerized subsystem of the PCX Application that will permit automatic formatting of orders received from the OptiMark System to ITS commitments. Certain technical amendments to the existing definitions are also being proposed to specifically incorporate the proposed operation of the PCX Application.[30]

The Commission is proposing both the PCX's and the NYSE's Description Amendment to Section 6(a)(ii) of the Plan. In proposing these alternative amendments, the Commission takes no position with respect to the need for any Plan amendment. The amendments being proposed provide a detailed description of four generic scenarios in which ITS commitments will be automatically generated and sent by means of the PCX Application Module.[31] As proposed, the NYSE's Description Amendment to Section 6(a)(ii) differs from the PCX's version in that the fourth scenario refers to commitments generated via a transaction involving one or more commitments to trade at the inferior block trade price for all of the size associated with the CQS Profile as "block policy" commitments originating from the PCX Application Module. In contrast, the PCX Description Amendment refers to such commitments as "trade-through" commitment. The substantive result is that these trades would be counted differently in the formula calculation.

Both the PCX and NYSE Description Amendments distinguish between (1) "trade-at" commitments and (2) "trade-through" commitments. For the specific purposes of the PCX Application, "trade-at" commitments refer to those commitments sent to obtain access to the quotes of other ITS Participants upon exhausting all available PCX trading interest at a price superior or equal to the quoted interest. "Trade-through" commitments refer to those commitments sent when trades otherwise would be executed on the PCX at inferior prices—that is, these commitments are sent to satisfy the away market superior quotes to avoid a potential violation of the ITS trade-through rule and block trade policy.

The NYSE Description Amendment to Section 6(a)(ii) also would require, prior to the PCX Application Module generating a commitment to trade representing an OptiMark System order, that the PCX process the order in accordance with proposed Section 8(a)(v) (requiring a probe of the PCX market—that is, a second exposure of the order to the PCX floor specialists before an ITS commitment is sent to another market), and, if possible, execution of the order on the PCX. The PCX Description Amendment does not contain this requirement. The PCX believes that, since PCX specialists will be required to enter their displayed bids and offers into the OptiMark System, a secondary probe is unnecessary after an order is generated by OptiMark and sent to the PCX Application.

Finally, the Commission realizes that certain ITS Participants believe that adoption of an amendment establishing a percentage formula is necessary in order to prevent the possibility that ITS, as used by the PCX members and their customers through the PCX Application, will be used as an order-delivery device to obtain cost-free, non-member access to other market centers. Therefore, the Commission is proposing both the PCX Formula Amendment and the NYSE Formula amendment. Generally, both Amendments add Section 8(h) to describe the operational parameters of the automated linkage between the PCX Application and ITS.

The PCX Formula Amendment establishes a percentage formula that would operate as a ceiling on the volume of "trade-at" commitments generated by the PCX on an automated basis, relative to the total volume of transactions resulting from the PCX Application (inclusive of ITS commitments). The percentage would be calculated on a share volume basis

[30] Both the PCX and NYSE Description Amendments proposed identical changes with respect to the following: (a) section 1(11) is being amended to reflect that, in addition to meaning the floor(s) of an Exchange Participant, the term "Exchange (Participant's) Market" also means the PCX Application of the PCX; (b) section 1(23) is being amended to provide that "member," member in the market center," "member on the floor" and "member in the Participant" (and any derivative) are defined to include one or more PCX members in their use of the PCX Application; (c) section 1(34A) is being amended to state that, in the case of PCX, members will be able to participate with the regional computer interface by means of the PCX Application Module; and (d) section 1(34B) to state that on PCX the entry of commitments to trade and receipt of reports of executions or cancellations of such commitments will be by means of the PCX Application Module.

[31] The NYSE proposed amendment to Section 6(a)(ii) contained language that, if adopted, would have required a Plan amendment for any proposal that was developed by a Participant for communicating with the ITS System in a manner different that described in Section 6(a)(ii) for that Participant. The Commission, however, is not including this language in the amendments currently being proposed.

for each "Rolling Calendar Quarter."[32] This calculation would look at the "trade-at" commitments sent to and executed by certain Participants that appropriately notify PCX in advance.[33] Under the PCX Formula Amendment, the generation of "trade-through" commitments would be outside the scope of the formula because the PCX does not believe that it should be penalized for, or prevented from, sending any "trade-through" commitments that it is obligated to send in order to fulfill what it characterizes as its "best execution obligations as a national market system participant."[34] The ceiling applicable to the PCX Application is determined in reference to the PCX's historical use of ITS, but will be higher for the first two phase-in stages. In this regard, the base percentage ceiling is set at 20%, with the phase-in ceilings set at 25% and 22.5%, subject to an adjustment in the ceilings to account for sudden periods of market volatility.

The PCS Formula Amendment also provides that, in the event that the Percentage of PCX Application ITS Volume exceeds the PCX Application ceiling for three consecutive rolling calendar quarters, PCX would be required to stop sending "trade-at" commitments that originate from the PCX Application Module on the first business day of the second month following the end of the third of such consecutive rolling calendar quarters. The restrictions would end on the first business day of the third month following the restriction date.[35] The PCX Formula Amendment further provides for a twenty-four-month implementation period during which the PCX may notify the ITSOC that it will undertake system adjustments to the PCX Application to ensure future compliance with the PCX Application ceiling. The PCX would have a minimum of nine calendar months from the date of notice to implement the proposed system adjustments. During this implementation period, the restrictions on sending ITS "trade-at" commitments originating from the PCX Application Module would not apply. Furthermore, the PCX Formula Amendment would require the PCX to provide the ITSOC with a report each month, indicating the number of shares for each of the components of the PCX Application Formula for the previous month, as well as the data necessary to determine the number of "trade-through" commitments originating from the PCX Application Module. Any Participant may call for an audit of these reports by a certified public accountant.

The NYSE Formula Amendment would calculate the percentage ceiling by dividing (a) ITS executed share volume resulting from PCX Application-generated automated commitments sent to other Participant markets by (b) total OptiMark share volume (that is, ITS outgoing executed share volume plus internal PCX Application executed volume). The NYSE Formula Amendment also provides for application of the formula on a rolling calendar quarter basis. Furthermore, the NYSE Formula Amendment initially would cover only "trade-at" commitments. It would not include "block trade" commitments. The formula also would not initially cover "trade-through" commitments, but such commitments would be included on a prospective basis if the ITS executed share volume resulting from a cycle evidences that the exclusion of trade-throughs creates a loophole in the formula. Specifically, the NYSE Formula Amendment provides that share volume from "trade-through" commitments would not be included in the formula unless, for a rolling calendar quarter, the PCX fails to execute internally at least 75 percent of the volume in those OptiMark calls producing trade-through commitments. Under the NYSE Formula Amendment, the base percentage ceiling applicable to the PCX Application would be set at 5%, with the phase-in ceilings set at 15% and 10%.[36] The NYSE Formula Amendment does not provide for adjustments to the ceiling limits to account for market volatility.

The NYSE Formula Amendment provides that, in the event that the Percentage of PCX Application ITS Volume exceeds the PCX Application ceiling for three consecutive rolling calendar quarters, PCX would be required to stop sending "trade-at" commitments, as well as "non-block-trade-through" commitments that originate from the PCX Application Module on the first business day of the second month following the end of the third of such consecutive rolling calendar quarters. The restrictions would end on the first business day of the third month following the restriction date. The restrictions would not apply to block trade commitments. The NYSE Formula Amendment also provides for a twenty-four-month implementation period during which the PCX may notify the ITSOC that it will undertake system adjustments to the PCX Application to ensure future compliance with the PCX Application ceiling. The NYSE Formula Amendment also grants the PCX a minimum of nine calendar months from the date of notice to implement the proposed system adjustments. During this implementation period, the restrictions on sending ITS "trade-at" commitments originating from the PCX Application Module would not apply; however, the NYSE Formula Amendment provides for a "fail-safe" mechanism: if the formula produces a number greater than 30 percent for a rolling calendar quarter, the restrictions would take effect notwithstanding any grace periods or other delay. The NYSE Formula Amendment also would require the PCX to provide the ITSOC with a report each month, indicating the number of shares for each of the components of the PCX Application Formula for the previous month, as well as the data necessary to determine the number of "trade-through" commitments originating from the PCX Application Module. Any Participant may call for an audit of these reports by a certified public account.

III. Request for Comment

The Commission is soliciting comment on the proposed amendments to the ITS Plan to link the PCX Application to the ITS System as discussed above, and also requests comment on specific issues presented by the proposed linkage. Interested persons are invited to submit written presentations of views, data and arguments concerning the proposed amendments to the ITS Plan, including the feasibility of implementing the proposed changes. The Commission further solicits comments on any other alternative amendments that

[32] "Rolling Calendar Quarter" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation.

[33] Any Participant may notify the PCX, in writing, that it chooses to have included in the formula the ITS share volume (for "trade-at"

[34] *See* PCX Rulemaking Petition, *supra* note 21.

[35] For example, assume that the percentage of PCX Application ITS volume exceeded the PCX Application ceiling for the Rolling Calendar Quarters ending January, February and March of a given year. The restriction date would be the first business day of May of that year, which is the first business day of the second month following March. The restrictions would apply as of that date and would continue through the end of July (ceasing as of the first business day of August, which is the first business day of the third month following May). Nothing would prohibit PCX from sending "trade-at" commitments through an acceptable alternative means, in lieu of utilizing the PCX Application, such as by electing to participate manually, as permitted under the ITS Plan outside the scope of Section 8(a)(v) of the Plan.

[36] The NYSE Formula Amendment bases these ceiling levels on the PCX's historical use of ITS for agency business (that is, excluding activity for the accounts of PCX specialists).

commenters may feel would better achieve the goals of the federal securities laws with respect to linking the PCX Application to the ITS.

The NYSE does not believe that the PCX Application complies with the probing requirement contained in Section 8(a)(v) of the Plan, which states, in part, that "[r]easonable efforts to probe the market to achieve a satisfactory execution there are expected to be taken before an order is reformatted as a commitment to trade and rerouted to another market through the System." The PCX believes that a requirement (which it plans to implement) that all specialists on its floor enter their quotes into the OptiMark System prior to a matching session satisfies the probing requirement. The Commission is requesting comment on whether the PCX Application, in light of PCX's requirement, complies with the "reasonable" probing aspect of Section 8(a)(v) of the Plan. The Commission also seeks comment on whether the PCX's or NYSE's version of the Description Amendment better meets the objectives of Section 11A of the Exchange Act, or whether an alternative that combines features of each version should be adopted.

According to the ITS Plan, ITS is not to be used as "an order delivery system whereby all or a substantial portion of orders to buy and sell System securities which are sent to a particular market are not executed within that market, but are rerouted to another market through the System for execution," as described in Section 8(a)(v) of the Plan. The Commission requests comment on the alternative formula amendments. The Commission may, after considering the comments, adopt some or all of the components of these formula amendments. The Commission also is requesting comment on whether it is necessary to amend the Plan to include a percentage formula in order to satisfy the requirements of Section 8(a)(v), or whether it would be sufficient for PCX to integrate OptiMark without a limitation on the amount of outgoing ITS commitments that are sent from the PCX Application to another marketplace for execution. If a percentage formula is not adopted in the Plan at this time, the Commission would expect the PCX to monitor the amount of outgoing commitments sent to ITS through the PCX Application in order to ensure that the PCX Application was not being used as this type of default order delivery system. If the Commission found that the PCX Application was being used in a manner inconsistent with this provision, the Commission would then require that the Plan be amended or that the operation of the PCX Application be altered in order to resolve the problem.

IV. Costs and Benefits of the Proposed Amendments and Their Effects on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when promulgating rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate to further the purposes of the Exchange Act.[37] The Commission preliminarily has considered the proposed amendments to the ITS Plan in light of the standards cited Section 23(a)(2) of the Act and believes that they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. The Commission believes that the PCX Application likely will promote competition among market centers because it has the potential to attract new market participants and to increase order flow to the PCX. By attracting order flow, the PCX Application may provide a new and enhanced source of liquidity for investors.

Commenters should consider the proposed rule's effect on competition, efficiency and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

The assist the Commission in its evaluation of the costs and benefits that may result from the proposes amendments, commenters are requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal herein The Commission preliminarily believes that the proposed amendments to the ITS Plan to include the PCX Application of the OptiMark System in the ITS System will provide a new and potentially more efficient way for the PCX to match and execute trading interest on behalf of inyestors. The Commission is requesting comment on the costs and benefits of the proposed amendments, and a comparison of the two alternative sets of amendments, as well as any possible anti-competitive impact of the proposed amendments. Specifically, the Commission requests commenters to address whether the proposed amendment would generate the anticipated benefits or impose any cost on U.S. investors or others.

Comments should be submitted by August 21, 1998.

V. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with Section 3 of the Regulatory Flexibility Act ("RFA").[38] It relates to proposed amendments to the ITS Plan to allow the linkage of the PCX Application of the OptiMark System to ITS.

A. Reasons for and Objectives of the Proposed

The Commission preliminarily believes that the Plan should be amended to add the PCX Application as an approved interface with ITS. The Commission is proposing the amendments on its own initiative because, despite prolonged negotiations, the ITS Participants have been unable to agree on how or whether to amend the Plan to link the PCX Application to ITS.

The Commission preliminarily believes that this linkage will further the purposes of Section 11A of the Act[39] and the development of a national market system by promoting economically efficient executions of securities transactions, fair competition among markets, best execution of customer order, and an opportunity for orders to be executed without the participation of a dealer.

B. Legal Basis

Section 11A(a)(3)(B) of the Exchange Act authorizes the Commission, by rule or order, the authorize or require SROs to act jointly with respect to matters as to which they share authority under the Exchange Act in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. It states explicitly that the Commission not only may approve national market system facilities in response to an application by SROs, but also may require SROs to implement such facilities on their own initiative. Rule 11Aa3–2,[40] adopted by the Commission under Section 11A, establishes procedures for proposing amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) states that the Commission may propose amendments to an effective

[37] *See* 15 U.S.C. 78w(a)(2).

[38] 5 U.S.C. 603(a).

[39] 15 U.S.C. 78k–1.

[40] 17 CFR 240.11Aa3–2.

national market system plan by publishing the text of the amendment together with a statement of purpose of the amendment.

C. Small Entities Affected by the Proposed Amendments

The proposal would directly affect the nine Participants of ITS, none of which are small entities. However, specialists on the exchange floors who trade ITS securities, floor brokers on exchange floors placing orders into ITS, and registered ITS/CAES market makers who trade ITS securities in the third market could be indirectly affected.

Paragraph (c)(1) of Rule 0–10[41] states that the term "small business" or "small organization," when referring to a broker-dealer, means a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 in its prior fiscal year audited financial statements or, if not required to file such statements, on the last business day of the preceding fiscal year; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. The Commission currently does not have any data on the number of small entities that could be affected.[42]

1. ITS Participants

The ITS Participants must comply with the proposed amendments once the amendments are adopted. The amendments would affect the eight Participants (other than PCX) in that they would be obliged to accept all properly transmitted ITS commitments reflecting a match between an expression of interest from OptiMark and a quote from another Participant market sent to their markets from the PCX Application by virtue of PCX being allowed to link the PCX Application to ITS.

2. Specialists, Floor Brokers, and Market Makers

Specialists who trade ITS securities on exchange floors, and floor brokers who enter orders into ITS, would be indirectly affected by the proposed amendments. Specialists would be required to accept commitments originating from the PCX Application reflecting a match between their quote or a floor broker order. Specifically, when a specialist entered its quote into ITS (or a floor broker entered an order into ITS) that constituted the best bid or offer for that security (ITS/BBO), the OptiMark System would match that quote (a "CQS Profile") with any appropriately priced OptiMark expression of interest (a "non-CQS profile"), resulting in an ITS commitment being sent from the PCX Application to the specialist. ITS/CAES market makers would be similarly affected.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would not impose any new reporting, recordkeeping, or other compliance requirements on broker-dealers indirectly affected by the proposal.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap or conflict with, the proposed rules.

F. Significant Alternatives

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

The Commission believes that none of the above alternatives is applicable to the proposed amendments. The ITS Participants are the only parties that are subject to the requirements of the ITS Plan. The ITS Participants are all national SROs and, as such, are not "small entities." The additional recordkeeping and reporting burden is solely on PCX, which is subject to Exchange Act Rule 11Aa3–1 reporting requirements, and is not a small entity for purposes of the RFA. Therefore, having considered the foregoing alternatives in the context of the proposed amendments, the Commission does not believe they are applicable to the instant proposal.

G. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. The Commission requests comment as well as empirical data on the impact the proposal will have on small broker-dealers, specialists or market makers that utilize ITS. Comment is specifically requested on whether broker-dealers that access ITS meet the revised definition of "small business" and on the number of small entities that would be affected by the proposed amendments and whether they would be considered small entities for purposes of the RFA. Also, the Commission is seeking comment on the perceived nature of the impact of the proposed amendments on these entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments to the ITS Plan are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec. gov. All comment letters should refer to File No. 4–208; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

VI. Commission Authority

Pursuant to Section 11A(a)(3)(B) of the Exchange Act,[43] the Commission is proposing changes to the ITS Plan as set forth below.

VII. Description of Proposed Amendments to the ITS Plan

The Commission hereby proposes, on its own initiative, two alternative sets of amendments to the ITS Plan to provide for the linking of the PCX Application to the ITS System, pursuant to Rule 11Aa3–2(b)(2) and (c)(1) and the Commission's authority under Section

[41] 17 CFR 240.0–10(c)(1).

[42] The Commission recently adopted revised definitions of "small entity." *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Exchange Act Release No. 40122 (June 24, 1998). The revision, among other things, expanded the affiliation standard applicable to broker-dealers, to exclude from the definition of a small entity many introducing broker-dealers that clear customer transactions through large firms. Currently, approximately 1079 of all registered broker-dealers will be characterized as "small." *See* revised Rule 0–10(i). [The Commission estimates there are 8,300 registered broker-dealers.]

[43] 15 U.S.C. 78k–l(a)(3)(B).

11A(a)(3)(B) of the Act.[44] Below is the text of the amended ITS Plan.[45] The first version presented reflects the PCX Description and Fomula Amendments. The second version presented substantially reflects the NYSE Description and Formula Amendments. Deleted text is [bracketed] and new language is italicized.

* * * * *

PCX Version of the Description and Formula Amendments

Section 1 Definitions

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(11) "Exchange (Participant's) Market" means the floor(s) of an Exchange Participant, except that, in the case of (a) the CSE, "Exchange (Participant's) Market" means in addition to the premises on which NSTS terminals are located, NSTS and ITS stations located in the NSTS Supervisory Center [.] *and (b) the PCX, "Exchange (Participant's) Market" also means the "PCX Application."*

* * * * *

(23) "Member," "members in the market center," "member on the floor" and "member in the Participant" (and any derivative and comparable phrases) as applied to (a) the CSE each mean one or more NSTS Users in their use of NSTS well as more as one or more members physically on the CSE floor , *and (b) the PCX in addition to the PCX members on the PCX floors, each also mean one or more PCX members in their use of the PCX Application.*

* * * * *

(33A) "PCX Application" means the computerized facility of the PCX, as defined in PCX Rule 15.1, that receives orders generated by the OptiMark System, a patented electronic matching system based on an optimization algorithm that, on a periodic "call" basis, processes certain qualifying expressions of trading interest called satisfaction profiles ("profiles"), including profiles created from the published quotations disseminated by the other Participants at commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes ("CQS profiles") and other PCX member profiles reflecting the bids or offers disseminated by the PCX specialists at commencement of the OptiMark System call. The orders received by the PCX Application will be processed by the PCX to permit: (a) in the case of those orders reflecting a match between contra-side non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with applicable PCX rules; and (b) in the case of those orders reflecting a match between a non-CQS profile and a CQS profile, appropriate transmission to the System by means of the PCX Application Module or any other authorized method. The PCX Application is not a part of the System.

(33B) "PCX Application Module" means the computerized subsystem of the PCX Application that permits automatic formatting of the orders received from the OptiMark System reflecting a match between a non-CQS profile and a CQS profile as commitments to trade for transmission thereafter to the System via the PCX Regional Switch.

(34A) "RCI" means the "Regional Computer Interface," the automated linkage between the System and collectively, the Regional Switches and the AMEX DBM that, when implemented, will enable members located on the floors of the AMEX, the BSE, the CHX, the PCX and the PHLX to participate in the Applications, *and, in the case of (a) the CSE, will enable members to participate by means of the NSTS Switch and (b) the PCX, will also enable members to participate by means of the PCX Application Module.*

(34B) "Regional Switch" means the computerized system of each of the BSE, the CHX, the PCX and the PHLX that, when implemented, will replace the original ITS stations on its floor. Each Regional Switch is not a part of the System, but permits the entry and receipt of System communications by means of CRT or other terminals, card readers and, in some instances, associated printers on the floor or the BSE, the CHX, the PCX or the PHLX, as appropriate (collective "ITS/Regional stations"), *and, also in the case of the PCX, the entry of commitments to trade and receipt of reports of executions or cancellations of such commitments by means of the PCX Application Module.*

* * * * *

Section 6 ITS

(a)(ii)

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The PCX would then report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40⅛ (or at the better price) with the identifier assigned to the PCX.

If a trade involves the PCX Application, the commitment to trade originating from the PCX may enter the System from the PCX Application Module through the RCI. In this case, a trade involving the PCX Application would take place as follows: In the original example, assume that the stock in question is traded on the NYSE as well as on the PCX. From time to time, on a periodic call basis, the OptiMark System matches available profiles (including CQS profiles and other PCX member profiles reflecting the bids or offers disseminated by the PCX specialists) in the stock and generates orders capable of immediate execution. For purposes of this example, assume that at the time an OptiMark System call commences, the continuously updated quotation display shows that the NYSE has a displayed best bid of 20 for 10,000 shares and a displayed best offer of 20¼ for 12,000 shares (i.e., 20–20¼, 100×120), representing the ITS BBO, and that all other Participant Markets' published quotations are disseminated at inferior prices and that none are greater in size than 100 shares.

The OptiMark System automatically creates the corresponding "buy" and "sell" CQS profiles reflecting the displayed interest from the NYSE and includes such profiles in ensuing call. As all profiles at hand are matched sequentially based on the satisfaction values assigned to different prices an sizes, a series of orders will be generated and delivered to the PCX. The PCX Application Module automatically will format any order reflecting a match with another Participant's displayed interest (in whole or in part) as a commitment to trade with such market, and acting on behalf of the responsible PCX member, will cause such commitment to enter the System (which, in turn, will route such commitment to the Participant Market). There are four possible scenarios that illustrate the different types of commitments to trade originating from the PCX Application Module.

Scenario 1

Upon exhausting all available matches among the non-CQS profiles, the OptiMark System call finds a match (in whole or in part) between the remainder of any such profile with the contra-side bid or offer as reflected in a CQS profile. In Scenario 1, the implementation of the PCX Application would result in (a) one or more trades reported by the PCX at a price better than or equal to the CQS profile and (b) one or more commitments to trade at

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[44] 5 U.S.C. 78k–l(a)(3)(B). Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a national market system (or subsystem thereof) or one or more of the facilities thereof.

[45] The text reflects the latest unofficial compilation of the ITS Plan supplied by the ITSOC, including all previously incorporated amendments up to May 30, 1997.

the associated CQS profile price (the commitments generated in this context referred to as "trade-at" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 20,000 shares at 20¼, a sell member profile for 16,000 shares at 20¼, and the NYSE's CQS sell profile for 12,000 shares at 20¼. The call may result in the generation of (a) orders reflecting the match between the contra member profiles to buy and sell 16,000 shares at 20¼ for immediate delivery to and execution on the PCX and (b) an order reflecting the match between the remaining portion of the member profile to buy 4,000 shares and the NYSE's stated offer at the price of 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy. If the 20¼ offer is still available when the "trade-at" commitment originating from the PCX Application Module reaches the NYSE, or if a better offer is available and if the rules of the NYSE permit an execution at that price, then the NYSE offer would accept the commitment, and an execution at 20¼ (or at the better price) would take place. The NYSE would then report the trade to the CTA Processor dissemination under the CTA Plan at 20¼ (or at the better price) with the identifier assigned to the NYSE.

Scenario 2

Upon finding no matching potential among the non-CQS profiles, the OptiMark System call finds a match (in whole or in part) between a PCX member profile and the contra-side bid or offer as reflected in a CQS profile. In Scenario 2, the implementation of the PCX Application would result in (a) no trade reported by the PCX and (b) one or more commitments to trade at the associated CQS profile price (the commitments generated in this context also referred to as "trade-at" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 20,000 shares at 20¼ with no contra sell profile at 20¼ or lower, except for the NYSE's CQS sell profile for 12,000 shares at 20¼. The call may result in the generation of an order reflecting the match between the buy member profile and the NYSE's stated offer of 12,000 shares at 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy. If the 20¼ offer is still available when the "trade-at" commitment originating from the PCX Application Module reaches the NYSE, or if a better offer is available and if the rules of the NYSE permit an execution at that price, then the NYSE offer would accept the commitment, and an execution at 20¼ (or at the better price) would take place. The NYSE would then report the trade to the CTA Processor for dissemination under the CTA Plan at 20¼ (or at the better price) with the identifier assigned to the NYSE.

Scenario 3

Prior to initiating any match among the non-CQS profiles at a price inferior to any CQS profile that otherwise may result in a potential "trade-through" as that term is defined in Exhibit B (Trade-Through Rule), the OptiMark System call finds a separate match (in whole or in part) with the contra-side bid or offer as reflected in the CQS profile. In Scenario 3, the implementation of the PCX Application would result in (a) one or more trades reported by the PCX at a price inferior to the CQS profile and (b) one or more commitments to trade at the superior price of the CQS profile for all of its associated size (the commitments generated in this context referred to as "trade-through" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 20,000 shares at 20⅜, a sell member profile for 1,000 shares at 20¼, another sell member profile for 10,000 shares at 20⅜, and the NYSE's CQS sell profile for 12,000 shares at 20¼. The call may result in the generation of (a) orders reflecting the matches between the contra member profiles to buy and sell 1,000 shares at 20⅜ and 7,000 shares also at 20⅜ for immediate delivery to an execution on the PCX and (b) an order reflecting the match between the relevant portion of the member profile to buy 12,000 shares and the NYSE's stated offer of 12,000 shares at the price of 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter a commitment to buy in accordance with Exhibit B (Trade-Through Rule).

Scenario 4

In connection with any matching potential found among the non-CQS profiles at a price inferior to any outstanding CQS profile and in a size that may result in a potential "block trade" as that term is defined in Exhibit C (Block Trade Policy), the OptiMark System call finds a separate match (in whole or in part) with the contra-side bid or offer as reflected in the CQS profile at the inferior price associated with the potential block trade. In Scenario 4, the implementation of the PCX Application would result in (a) one or more block trades by the PCX at a price inferior to the CQS profile and (b) one or more commitments to trade at the inferior block trade price for all of the size associated with the CQS profile (the commitments generated in this context also referred to as "trade-through" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 22,000 shares at 20⅜, a sell member profile for 10,000 shares at 20⅜, and the NYSE's CQS sell profile for 12,000 shares at 20¼. The call may result in the generation of (a) orders reflecting the match between the contra member profiles to buy and sell 10,000 shares at 20⅜ for immediate delivery to and execution on the PCX and (b) an order reflecting the match between the relevant portion of the member profile to buy 12,000 shares and the NYSE's stated offer of 12,000 shares at the block trade price of 20⅜ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy in accordant with Exhibit C (Block Trade Policy).

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Section 8 Participants' Implementation Obligations.

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(h) Operational Parameters for the PCX Application Automated Linkage. (i) In order to ensure the proper use of the PCX Application in a manner consistent with the requirements set forth in Section 8(a)(v) of this Plan, the PCX may send "trade-at" commitments originating from the PCX Application Module (as such "trade-at" commitments are described more fully in section 6(a)(ii) in Scenarios 1 and 2) to other Participant Markets only in compliance with the requirements of this section 8(h).

(ii) For the purpose of this section 8(h):

(A) "Rolling Calendar Quarter" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation.

(B) "Percentage of PCX Application ITS Volume" for a Rolling Calendar Quarter is defined pursuant to the following formula (the "PCX Application Formula"), expressed as a percentage:

$$\frac{X}{X+Y}$$

X = Executed ITS share volume reported pursuont to the CTA Plon by the Notifying Participants resulting from the acceptonce ond execution of "trode-ot" commitments originating from the PCX Application Module (as such "trade-at" commitments ore described more fully in section 6(a)(ii) in Scenarios 1 ond 2).

Y = Executed share volume reported pursuant to the CTA Plan by the PCX resulting from the execution of orders through the PCX Applicotion.

(C) The "notifying Porticipant" means any Particinont thot notifies the PCX, in writing, that "X" of the PCX Application Formula should include the ITS shore volume reported to the CTA Plon by such Participant resulting from the acceptance ond execution of "trode-ot" commitments originating from the PCX Applicotion Module. Initial notice is due prior to the end of the first Rolling Calendar Quarter and will remain in effect until such notice is withdrown.

(D) the "PCX Application Ceiling" for a Rolling Calendor Quorter is:

* For the first five consecutive Rolling Calendar Quarters: 25 percent;

* For the second five consecutive Rolling Calendar Quorters: 22.5 percent; and

* For eoch subsequent Rolling Calendar Quarters: 20 percent; provided, however, that each of the above-listed percentages shall be odjusted upword with respect to ony given Rolling Calendor Quarter to include the difference, if ony, by which the overage Percentage of PCX Application ITS Volume for the immediately preceding three Rolling Colendor Quorter fell short of the overage PCX Application Ceiling for the corresponding period of time.

For exomple, ossume thot the PCX Applicotion is in the 11th Rolling Colendor Quorter of its operation. Further assume thot the overoge Percentoge of PCX Applicotion ITS Volume for the 8th, 9th, and 10th Rolling Calendar Quorter wos 18%. The applicoble PCX Applicotion Ceiling for the 11th Rolling Calendar Quarter would be colculated by odding the difference by which 18% fell short of the overage PCX Application Ceiling over the some period of time—that is, the difference between 22.5% ond 18%—to the initial percentage of 20%. In this cose, the opplicoble PCX Application Ceiling for the 11th Rolling Colendor Quorter would be 24.5%, ofter odjusting the initial percentoge of 20% to odd the difference of 4.5%.

(iii) In the event thot the Percentage of PCX Applicotion ITS Volume exceeds the PCX Application Ceiling for three consecutive Rolling Calendor Quorters, the PCX shall cease sending "trade-at" commitments originating from the PCX Application Module (the prohibition on sending such commitments hereinofter referred to os the "Restrictions") on the first business doy of the second month following the end of the third of such consecutive Rolling Colendor Quarters (the "Restriction Date"). The Restrictions will end on the first business day of the third month following the Restriction Date.

For example, ossume that the Percentoge of PCX Application ITS Volume exceeds the PCX Applicotion Ceiling for the Rolling Calendor Quarter ending in January, February and March of o given yeor. The Restriction Dote would be the first business day of Moy of that year, which is the first business day of the second month following Morch. The Restrictions would apply as of that date ond would continue through the end of July (ceosing as of the first business day of August, which is the first business day of the third month following Moy).

The Restrictions set forth in this subsection 8(h)(iii) shall, under no circumstances, be construed to opply to the "trode-through" commitments originating from PCX Application Module (as such "trade-through" commitments are described more fully in section 6(a)(ii) in Scenorios 3 ond 4). Nothing herein prohibits the PCX from sending ony "trode-ot" commitments through an acceptable alternative meons, in lieu of utilizing the PCX Applicotion Module, such os by electing to participate manually as permitted under the ITS Plan outside the scope of section 8(o)(v).

(iv) Notwithstanding subsection 8(h)(iii) above, during the first 24 colendor months following implementotion of the PCX Applicotion, the PCX retoins the right to notify the Operoting Committee in writing, on or prior to the Restriction Date, that it will undertake, or cause to be undertoken, system adjustments to the operotion of the PCX Applicotion in on effort to ensure future compliance with the PCX Applicotion Ceiling. In the event of such notification, the PCX shall have, ot o minimum, nine colendor months from the date of such notice (or such longer period os may be approved by the Operoting Committee upon showing of reosonable couse) to implement its proposed system adjustments (the "Implementation Period"). During the Implementotion Period, the Restrictions sholl not opply. During the next 12 colendor months following the end of the Implementotion Period, if the Percentoge of PCX Applicotion ITS Volume exceeds the PCX Application Ceiling for ony Rolling Calendor Quorter, the Restrictions sholl opply on the first business day of the second month following the end of such Rolling Calendar Quarter (the "Subsequent Restriction Date"). In that event, the Restrictions will end on the first business day of the third month following the Subsequent Restriction Dote.

For example, assume thot the Percentage of PCX Applicotion ITS Volume exceeds the PCX Application Ceiling for the Rolling Colendar Quorters ending in Jonuory, Februory ond March of Yeor 1 (which fall within the first 24 colendar months of the operotion of the PCX Application). As in the exomple obove, the Restriction Dote would be the first business doy of May of that year, which is the first business doy of the second month following March. The Restrictions would apply os of thot date, unless the PCX notified the Operating Committee, on or prior to the first business day in Moy, thot it plonned to effect system adjustments in an attempt to ensure future compliance with the PCX Applicotion Ceiling. Assuming that the PCX provides such notification on the Restriction Date, the Restrictions would not apply during the Implementation Period, which would lost for, ot a minimum, nine months from the Restriction Date (that is, assuming the minimum duration, the nine calendar months of May through Jonuary of Yeor 2). Following the end of the Implementation Period, ossume that the Percentage of PCX Application ITS Volume exceeded the PCX Applicotion Ceiling for the next Rolling Calendor Quorter (the quorter beginning in February and ending April or Year 2). In thot event, the Subsequent Restriction Dote would be the first business day of June of Yeor 2, which is the first business doy of the second month following April. The Restrictions would opply beginning on the doy ond would continue through the end of August of Yeor 2 (ceasing os of the first business doy of September of Yeor 2, which is the first business day of the third month following June).

The Restrictions set forth in this subsection 8(h)(iv) sholl, under no circumstonces, be construed to opply to the "trode-through" commitments originoting from the PCX Applicotion Module (as such "trade-through" commitments ore described more fully in section 6(a)(ii) in Scenorios 3 ond 4). Nothing herein prohibits the PCX from sending ony "trode-at" commitments through an occeptable olternative meons, in lieu of utilizing the PCX Applicotion Module, such as by electing to participate monually as permitted

under the ITS Plan outside the scope of section 8(a)(v).

(v) Reporting and Audits, Each month the PCX shall furnish the Operating Committee with a report showing the number of shares for each of the components of the PCX Application Formula for the previous month, as well as the date necessary to determine the number of "trade-through" commitments originating from the PCX Application Module (as such "trade-through" commitments are described more fully in section 6(a)(ii) in Scenarios 3 and 4). Any one or more Participants may cause a certified public accountant to audit any one or more such reports. The requesting Participant(s) shall pay for such audits.

* * * * *

NYSE Version of the Description and Formula Amendments

Section 1 Definitions

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(11) "Exchange (Participant's) Market" means the floor(s) of an Exchange Participant, except that, in the case of (a) the CSE, "Exchange (Participant's) Market" means in addition to the premises on which NSTS terminals are located, NSTS and ITS stations located in the NSTS Supervisory Center[.], *and (b) the PCX "Exchange (Participant's) Market" also means the "PCX Application."*

* * * * *

(23) "Member," "member in the market center," "member on the floor" and "member in the Participant" (and any derivative and comparable phrases) as applied to (a) the CSE each mean one or more NSTS Users in their use of NSTS as well as one or more members physically on the CSE floor, *and (b) the PCX, in addition to the PCX members on the PCX floors, each also mean one or more PCX members in their use of the PCX Application.*

* * * * *

(33A) "PCX Application" means the computerized facility of the PCX, as defined in PCX Rule 15.1, that receives orders generated by the OptiMark System, a patented electronic matching system based on an optimization algorithm that, on a periodic "call" basis processes certain qualifying expressions of trading interest called satisfaction profiles ("profiles"), including profiles created from the published quotations disseminated by the other Participants at the commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes ("CQS profiles"). The orders received by the PCX Application will be processed by the PCX to permit: (a) in the case of those orders reflecting a match between contra-side non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between a non-CQS profile and a CQS profile (i) processing pursuant to Section 6(a)(ii)(A); or (ii) transmission to the System pursuant to Section 6(a)(ii)B).) The PCX Application is not part of the System.

(33B) "PCX Application Module" means the computerized subsystem of the PCX Application that permits automatic formatting of the orders received from the OptiMark System reflecting a match between a non-CQS profile and a CQS profile as commitments to trade for transmission thereafter to the System via the PCX Regional Switch.

(34A) "RCI" means the "Regional Computer Interface," the automated linkage between the System and, and collectively, the Regional Switches and the AMEX DBM that, when implemented, will enable members located on the floors of the AMEX, the BSE, the CHX, the PCX and the PHLX to participate in the Applications, *and, in the case of (a) the CSE, will enable members to participate by means of the NSTS Switch and (b) the PCX, also will enable members to participate by means of the PCX Application Module.*

(34B) "Regional Switch" means the computerized system of each of the BSE, the CHX, the PCX and the PHLX that, when implemented, will replace the original ITS stations on its floor. Each Regional Switch is not a part of the System, but permits the entry and receipt of System communications by means of CRT or other terminals, card readers, and, in some instances, associated printers on the floor or the BSE, the CHX, the PCX or the PHLX, as appropriate (collectively "ITS/Regional stations"), *and, also in the case of the PCX, the entry of commitments to trade and receipt of reports of executions or cancellations of such commitments by means of the PCX Applications Module.*

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Section 6 ITS.

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(a)(ii) *Description of ITS Transactions.* Through ITS, a member located in one Participant Market who wishes to buy (or sell), for example, 100 shares of a particular common stock that is also traded through the System by members in one or more other Participant Markets is able to buy the stock from (or sell stock to) such member(s).

(A) Description Applicable to the AMEX, BSE, CBOE, CHX, NYSE, PHLX and PCX.

With respect to an ITS transaction involving the AMEX, BSE, CBOE, CHX, NYSE, PHLX and PCX (other than with respect to transactions involving the PCX Application Module), for example, assume that a member firm of the NYSE receives from a customer an order to purchase 100 shares of a given NYSE listed stock that is also traded on the PCX and the PHLX and sends that order to the NYSE floor for execution.

* * * * *

The PCX would then report the trade to the CTA Processor for dissemination under the CTA Plan at 40–40⅛ (or at the better price) with the identifier assigned to the PCX.

(B) Description Applicable to the PCX Application

(1) Generation of ITS Commitments

If a trade involves the PCX Application, the commitment to trade originating from the PCX may enter the System from the PCX Application Module through the RCI. In this case, a trade involving the PCX Application would take place as follows: In the original example, assume that the stock in question is traded on the NYSE as well as on the PCX. From time to time, on a periodic call basis, the OptiMark System matches available profiles (including CQS profiles) in the stock and generates orders capable of immediate execution. For the purposes of this example, assume that at the time an OptiMark System call commences, the continuously updated quotation display shows that the NYSE has a displayed best bid of 20 for 10,000 shares and a displayed best offer of 20¼ for 12,000 shares (i.e., 20–20¼, 100 × 120), representing the ITS BBO, and that all other Participant Markets' published quotations are disseminated at inferior prices and that none are greater in size than 100 shares.

The OptiMark System automatically creates the corresponding "buy" and "sell" CQS profiles reflecting the displayed interest from the NYSE and includes such profiles in the ensuing call. As all profiles at hand are matched sequentially based on the satisfaction values assigned to different prices and sizes, a series of orders will be generated and delivered to the PCX. Thereafter, the PCX Application Module automatically will format any order reflecting a match with another Participant Market's displayed interest (in whole or in part) as a commitment to trade with such market, and acting on behalf of the responsible PCX member,

will cause such commitment to enter the System (which, in turn, will route such commitment to the Participant Market). There are four possible scenarios that illustrate the different types of commitments to trade originating from the PCX Application Module.

Scenario 1

Upon exhausting all available matches among the non-CQS profiles, the OptiMark System call finds a match (in whole or in part) between the remainder of any such profile with the contra-side bid or offer as reflected in CQS profile. In Scenario 1, the implementation of the PCX Application would result in (a) one or more trades reported by the PCX at a price better than or equal to the CQS profile and (b) one or more commitments to trade at the associated CQS profile price (the commitments generated in this context referred to as "trade-at" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 20,000 shares at 20¼, a PCX sell member profile for 16,000 shares at 20¼, and the NYSE's CQS sell profile for 12,000 shares at 20¼. The call will result in the generation of (a) orders reflecting the match between the contra member profiles to buy and sell 16,000 shares at 20¼ for immediate delivery to an execution on the PCX and (b) an order reflecting the match between the remaining portion of the member profile to buy 4,000 shares and the NYSE's stated offer at the price of 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy. If the 20¼ offer is still available when the "trade-at" commitment originating from the PCX Application Module reaches the NYSE, or if a better offer is available and if the rules of the NYSE permit an execution at that price, then the NYSE offer would accept the commitment, and an execution at 20¼ (or at the better price) would take place. The NYSE would then report the trade to the CTA Processor for dissemination under the CTA Plan at 20¼ (or at the better price) with the identifier assigned to the NYSE.

Scenario 2

Upon finding no matching potential among the non-CQS profiles, the OptiMark System call finds a match (in whole or in part) between a PCX member profile and the contra-side bid or offer as reflected in a CQS profile. In Scenario 2, the implementation of the PCX Application would result in (a) no trade reported by the PCX and (b) one or more commitments to trade at the associated CQS profile price (the commitments generated in this context also referred to as "trade-at" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include buy member profile for 20,000 shares at 20¼ with no contra sell profile at 20¼ or lower, except for the NYSE's CQS profile to sell 12,000 shares at 20¼. The call will result in the generation of an order reflecting the match between the buy member profile and the NYSE's stated offer of 12,000 shares at 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy. If the 20¼ offer is still available when the "trade-at" commitment originating from the PCX Application Module reaches the NYSE, or if a better offer is available and if the rules of the NYSE permit an execution at that price, then the NYSE offer would accept the commitment, and an execution at 20¼ (or at the better price) would take place. The NYSE would then report the trade to the CTA Processor for dissemination under the CTA Plan at 20¼ (or at the better price) with the identifier assigned to the NYSE.

Scenario 3

Prior to initiating any potential match among the non-CQS profiles at a price inferior to any outstanding CQS profile that may result in a potential "trade-through" as that term is defined in Exhibit B (Trade-Through Rule), the OptiMark System call finds a separate match (in whole or in part) with the contra-side bid or offer as reflected in the CQS profile. In Scenario 3, the implementation of the PCX Application would result in (a) one or more trades reported by the PCX at a price inferior to the CQS profile and (b) one or more commitments to trade at the superior price of the CQS profile for all of its associated size (the commitments generated in this context referred to as "trade-through" commitments originating from the PCX Application Module).

For example, an OptiMark System call may include a buy member profile for 20,000 shares at 20⅜, a sell member profile for 1,000 shares at 20¼, another sell member profile for 10,000 shares at 20⅜, and the NYSE's CQS profile to sell 12,000 shares at 20¼. The call will result in the generation of (a) orders reflecting the matches between the contra member profiles to buy and sell 1,000 shares at 20⅜ and 7,000 shares also at 20⅜ for immediate delivery to and execution on the PCX and (b) an order reflecting the match between the relevant portion of the member profile to buy 12,000 shares and the NYSE's stated offer 12,000 shares at the price of 20¼ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy in accordance with Exhibit B (Trade-Through Rule).

Scenario 4

In connection with any matching potential found among the non-CQS profiles at a price inferior to any outstanding CQS profile and in any size that may result in a potential "block trade" as that term is defined in Exhibit C (Block Trade Policy), the OptiMark System call finds a separate match (in whole or in part) with the contra-side bid or offers as reflected in the CQS profile at the inferior price associated with the potential block trade. In Scenario 4, the implementation of the PCX Application would result in (a) one or more block trades reported by the PCX at a price inferior to the CQS profile and (b) one or more commitments to trade at the inferior block trade price for all of the size associated with the CQS profile (the commitments generated in this context referred to as "block policy" commitments originating from the PCX Application Module).

For example, an OptiMark system call may include a PCX buy member profile for 22,000 shares at 20⅜, a sell member profile for 10,000 shares at 20⅜, and the NYSE's CQS profile to sell 12,000 shares at 20¼. The call will result in the generation of (a) orders reflecting the match between the contra member profiles to buy and sell 10,000 shares at 20⅜ for immediate delivery to and execution on the PCX and (b) an order reflecting the match between the relevant portion of the member profile to buy 12,000 shares and the NYSE's stated offer of 12,000 shares at the block trade price of 20⅜ for immediate acceptance by the PCX Application Module and issuance thereafter of a commitment to buy in accordance with Exhibit C (Block Trade Policy).

(2) PCX Application Processing/Pricing

Prior to the PCX Application Module generating a commitment to trade representing an OptiMark system order, the PCX shall process such order as required by Section 8(a)(v) of the Plan and PCX Rule 15.X, and, if possible, execute the order on the PCX. If after processing in accordance with the foregoing Plan provision and PCX rule, any portion of such order remains, the PCX Application Module will format the balance of the order into a commitment to trade and, acting on behalf of the PCX member who represented the

customer interest in the OptiMark System, send the commitment to the Participant Market with whose quotation the order had been matched. Such commitment shall priced at the published contra-side bid of offer price disseminated by the Participant Market with which the order is matched, except that in the case of a "block policy" commitment, the price of the commitment shall be the price of the block trade on the PCX.

(C) Description Applicable to the CSE

With respect to an ITS transaction that [If a trade] involves the CSE, the commitment to trade or a response thereto destined for or originating from the CSE will leave and enter the System through a NSTS Switch. In the [foregoing] example *in Section 6(a)(ii)(A) above*, a trade involving the CSE would occur as follows:

* * * * *

The CSE would then report the trade to the CTA Plan Processor for dissemination under the CTA Plan at the response price with the identifier assigned to the CSE.

(D) Description Applicable to the NASD

With respect to an ITS transaction that [If a trade] involves the ITS/CAES Third Market, the commitment to trade or response thereto destined for or originating with an ITS/CAES Market Maker will leave and enter the System at the CAES Switch. A trade involving the ITS/CAES Third Market would take place as follows. In the [original] example *in Section 6(a)(ii)(a) above*, assume that the stock in question is also an ITS/CAES security and that the order is for 300 shares.

* * * * *

Section 8 Participant's Implementation Obligations

(a)(v) *Automated Generation of Commitments. Section 6(a)(ii) describes the approved methods by which each of the Participants is authorized to send commitments to trade via the System. In addition to that section, and with respect to the general use of the System (and when considering possible amendments to the Plan),* [T]the Participants agree that: ITS is not designed to be, and should not be used as, an order delivery system whereby all or a substantial portion of orders to buy and sell System securities which are sent to a particular market are not executed within that market, but are routinely rerouted to another market through the System for execution. In the normal course, most orders received within the market of an Exchange Participant are expected to be executed within the market. Reasonable efforts to probe the market to achieve a satisfactory execution there are expected to be taken before the order is reformed as a commitment to trade and rerouted to another market through the System*; provided, however, that PCX, with respect to an order received from the OptiMark System, shall not be required to probe the PCX market for an execution therein prior to the PCX Application Module automatically reformatting a commitment to trade with respect to such order if the share volume of the commitment, if executed, would not be included in the "X variable," as that term is used in subsection 8(h)(ii)(B).*

* * * * *

(h) Operational Parameters for the PCX Application Automated Linkage. (i) The PCX may send computer-generated commitments to trade to other Participant Markets through the PCX Application Module only in compliance with the requirements of this Section.

(ii) For the purposes of this Section:

(A) "Rolling Calendar Quarter" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending in the last business day of the first three full calendar months following the month in which the PCX Application commences operation.

(B) "Percentage of PCX Application ITS Volume" for a Rolling Calendar Quarter is defined pursuant to the following formula (the "PCX Application Formula") expressed as a percentage:

X=Executed share volume reported pursuant to the CTA Plan by all Participant Markets (other than the PCX) (the "Executed ITS Share Volume") resulting from the acceptance and execution of "trade-at" commitments originating from the PCX Application Module; provided however, that if in any Rolling Calendar Quarter the PCX does not execute in its own market more than 75 percent of the aggregate number if shares in those calls that produce "trade-through" commitments, then, beginning in the month following such Rolling Calendar Quarter, this X variable will include the Executed ITS Share Volume resulting from the acceptance and execution of "trade-through" commitments originating from the PCX Application Module. In that event, the Executed Share Volume resulting from the acceptance and execution of "trade-through" commitments shall continue to be included in this X variable until, for a Rolling Calendar Quarter, the PCX executes in its own market at least 75 percent of the aggregate number of shares in those calls that produce "trade-through" commitments ("Trade-at" and "trade-through" commitments are described more fully in Section 6(a)(ii)(B).)

Y=Executed share volume reported pursuant to the CTA Plan by the PCX resulting from the execution of orders through the PCX Application.

(C) The "PCX Application Ceiling" for a Rolling Calendar Quarter is:

**For the first five consecutive Rolling Calendar Quarters: 15 percent.*

**For the second five consecutive Rolling Calendar Quarters: 10 percent.*

**For each subsequent Rolling Calendar Quarter: 5 percent.*

(iii) In the event that the Percentage of PCX Application ITS Volume exceeds the PCX Application Ceiling for three consecutive Rolling Calendar Quarters, the PCX shall cease sending (i) "trade-at" commitments and (ii) trade-through commitments, if, at the end of each third consecutive Rolling Calendar Quarter, the share volume of such trade-through commitments were included in the "X variable" (as that term is used in subsection 8(h)(ii)(B)) originated from the PCX Application Module (the prohibition on sending such commitments hereinafter referred to as the "Restrictions") on the first business day of the second month following the end of the third of such consecutive Rolling Calendar Quarters (the "Restriction Date"). The Restrictions will end on the first business day of the third month following the Restriction Date.

For example, assume that the Percentage of PCX Application Volume exceeds the PCX Application Ceiling for the Rolling Calendar Quarters ending in January, February and March of a given year. The Restriction Date would be the first business day of May of that year, which is the first business day of the second month following March. The Restrictions would apply as of that date and would continue through the end of July (ceasing as of the first business day of August, which is the first business day of the third month following May). The restrictions set forth in this subsection 8(h)(iii) shall not be construed to apply to the "trade-through" commitments except as provided in the preceding paragraph) or "block policy" commitments originating from the PCX Application Module (as such commitments are described more fully in Section 6(a)(ii)(B) in Scenarios 3 and 4). Nothing herein prohibits the PCX from sending any commitments resulting from orders generated by the OptiMark System pursuant to Section

6(o)(ii) obove in lieu of utilizing the PCX Applicotion Module.

(iv) Notwithstonding subsection 8(h)(iii) obove, during the first 24 colendor months following implementotion of the PCX Applicotion, the PCX retoins the right to notify the Operating Committee in writing, on or prior to the Restriction Dote, thot it will undertake, or couse to be undertaken, system odjustments to the operotion of the PCX Application in an effort to ensure future complionce with the PCX Applicotion Ceiling. In the event of such notificotion, the PCX shall hove, ot o minimum, nine colendor months from the date of such notice (or such longer period os moy be approved by oll members of the Operoting Committee upon showing of reosonable cause), to implement its proposed system adjustments (the "Implementotion Period"). During the Implementation Period, the Restrictions shall not opply. During the next 12 colendor months following the end of the Implementotion Period, if the Percentoge of PCX Application ITS Volume exceeds the PCX Application Ceiling for ony Rolling Colendor Quarter, the Restrictions sholl opply on the first business doy of the second month following the end of such Rolling Calendor Quarter (the "Subsequent Restriction Dote"). In that event, the Restrictions will end on the first business doy of the third month following the Subsequent Restriction Date.

For exomple, ossume thot the Percentage of PCX Application ITS Volume exceeds the PCX Applicotion Ceiling for the Rolling Colendar Quarters ending in Jonuary, Februory ond Morch of Yeor 1 (which foll within the first 24 calendar months of the operation of the PCX Application). As in the obove exomple, the Restriction Date would be the first business doy of Moy of that year, which is the first business day of the second month following Morch. The Restrictions would opply os of that date, unless the PCX notified the Operoting Committee, on or prior to the first business day in May, that it plonned to effect system odjustments in an attempt to ensure future complionce with the PCX Applicotion Ceiling. Assuming that the PCX provides such notification on the Restriction Dote, the Restrictions would not apply during the Implementation Period, which would lost for at least nine months from the Restriction Dote (that is, ossuming the minimum durotion, the nine calendar months of Moy through Jonuory of Yeor 2). Following the end of the Implementation Period, ossume thot the Percentoge of PCX Applicotion ITS Volume exceeded the PCX Application Ceiling for the next Rolling Calendor (the quorter beginning in Februory ond ending April of Yeor 2). In that event, the Subsequent Restriction Dote would be the first business day of June of Yeor 2, which is the first business doy of the second month following April. The Restrictions would opply beginning on that doy ond would continue through the end of August of Year 2 (ceosing os of the first business doy of September of Yeor 2, which is the first business doy of the third month following June).

(v) Notwithstanding subsections 8(h)(iii) ond (iv) above, if for ony Rolling Calendar Quarter the Percentage of PCX Application ITS Volume exceeds 30 percent, the Restrictions shall apply os of the first business day of the second month following the end of such rolling Colendor Quarter. In thot event, the Restrictions shall opply for three calendor months.

(vi) Each month the PCX sholl furnish the Operoting Committee with o report showing the number of shares for eoch of the components of the PCX Applicotion Formulo for the previous month, os well os the data necessory to determine if the shares in those calls thot produce "trode-through" commitments (os such commitments ore described more fully in Section 6(o)(ii)(B) in Scenario 3) originating from the PCX Applicotion Module ore or ore not included in the "X voriable" of the PCX Applicotion Formulo. Any one or more Porticiponts may couse o certified public occountont to oudit ony one or more of such reports. The requesting Porticipont(s) sholl poy for oll such audits.

* * * * *

Dated: July 15, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19435 Filed 7–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40202; File No. SR–CHX–98–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Specialists' Payment of Listing Fees

July 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article XXX, Rule 20A in order to establish that Specialists, Co-Specialists and Relief Specialists may not pay listing fees for any issuing corporation for which they act in such capacity. 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 CHX 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 CHX 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 Stotement of the Purpose of, ond Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 20A to Article XXX to establish that Specialists, Co-Specialists and Relief Specialists may not pay listing fees, including initial and maintenance fees, for any issuing corporation for which they act in such capacity.

The purpose of the proposed rule change is to avoid situations in which either an actual or apparent conflict of interest may arise. A Specialist has an obligation to maintain a free and open market in an issue. In order to maintain the integrity of the market, Specialists must remain independent of issuers. The Exchange has already established rules that seek to ensure that independence. For example, Article XXX, Rule 23 prohibits Specialists from engaging in any business transactions with the issuer of exclusive issues. Also, Interpretation .01 to Article XXXVIII,

Rule 23 contains a section on the relationship between company officials and Specialists designed to ensure that the relationship is appropriate. Consistent with that goal, the Exchange seeks to impose a broad restriction that Specialists cannot pay listing fees for any issuer, whether the issue is exclusive or not. The Exchange believes that the proposed rule change will help ensure that there are no incentives on the part of issuers of Specialists that may jeopardize or call into question the independence of the market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–15 and should be submitted by August 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19441 Filed 7–21–98; 8:45 am]

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40207; File No. SR–GSCC–98–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Funds-Only Settlement Payment Procedures

July 15, 1998.

On February 17, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–98–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of proposal was published in the **Federal Register** on April 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39860 (April 14, 1998), 63 FR 19774.

I. Description

Two important elements of GSCC's risk management process are the daily calculation and collection of clearing fund deposit deficiency amounts and of mark to the market margin. At times, GSCC is obligated to pay a member a FOS amount on a day on which that member also has a clearing fund deficiency call. Pursuant to its current rules, GSCC is required to make the FOS payment to such a member prior to the time the member must make its clearing fund deficiency payment to GSCC.[3] The proposed rule change permits GSCC to retain FOS payments it owes to a member and to apply such amounts to any clearing fund deposit obligation the member owes to GSCC.[4]

Under the proposed rule change, GSCC is entitled to retain the lesser of the FOS amount or the amount of the clearing fund call (or the entire FOS amount if the difference between the amounts is zero) and apply it to the member's clearing fund deposit requirement. If a member pays all or a portion of its clearing fund deficiency in any type of eligible collateral by a preestablished time before GSCC's deadline to make its own FOS payments to members,[5] GSCC is only entitled to retain the portion of its FOS obligation to the member in an amount equal to the member's remaining clearing fund deficiency.[6]

II. Discussion

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will allow GSCC to increase its control over FOS payments it owes to members that have a significant clearing fund deposit obligation. This should

[3] GSCC is required to pay FOS obligations to members by 10:00 a.m. eastern time ("ET"). Members must satisfy clearing fund deficiencies by the later of two hours after the receipt of GSCC's call or 10:00 a.m. ET. However, if the notification is not made earlier then two hours before the close of the cash FedWire, members may satisfy the calls on the next business day.

[4] GSCC does not plan to exercise the offset right unless it has a significant FOS obligation to a member (*i.e.*, $5 million or more), and the member has a significant clearing fund deficiency (*i.e.*, $5 million or more).

[5] GSCC plans to set the preestablished time at fifteen minutes before GSCC's deadline to make it own FOS payments to members.

[6] Pursuant to GSCC's existing rules, a member has the right to substitute eligible collateral for any cash that GSCC applies to its clearing fund deposit as a result of an offset.

[7] 15 U.S.C. 78q–1(b)(3)(F).

help reduce the risk to GSCC that a member will fail after it has received a FOS payment from GSCC but before it has satisfied its clearing fund deficiency call. Thus, the proposal should enhance GSCC's risk management process.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–98–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19440 Filed 7–21–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40197; File No. SR–MSRB–98–04]

Self-Regulatory Organizations, Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–32, on Disclosures in Connection with New Issues

July 14, 1998.

I. Introduction

On March 25, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–32, on disclosures in connection with new issues. The proposed rule change provides an alternate method of compliance by brokers, dealers and municipal securities dealers with their obligation to deliver official statements in final form to customers by settlement for certain new issues of variable rate demand obligations. Notice of the proposed rule change appeared in the **Federal Register** on April 28, 1998.[3] The Commission received one comment letter which endorsed the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

The Board amended Rule G–32, on disclosures in connection with new issues, that would permit brokers, dealers and municipal securities dealers ("dealers"), selling variable rate demand obligations ("VRDO's") to customers during the underwriting period, to deliver a preliminary official statement by no later than settlement and to send the official statement in final form within one business day of receipt from the issuer, provided these VRDOs qualify for the exemption provided under subparagraph (d)(1)(iii) of Rule 15c2–12 under the Act ("Rule 15c2–12").

In 1989, the Commission promulgated Rule 15c2–12,[5] which requires underwriters in primary offerings subject to the rule, among other things, to contract with issuers to receive final official statements within seven business days after any final agreement to purchase, offer or sell municipal securities and to receive these statements in sufficient time to accompany any confirmation that requests payment from any customer. Commenters questioned applying this provision of the rule to VRDOs. In response, the Commission provided an exemption to the rule for obligations that can be tendered by their holders for purchase by the issuer or its agent at least as frequently as every nine months and that are in authorized denominations of $100,000 or more ("Exempt VRDOs"). This exemption reflects the fundamental structural differences between VRDOs and other traditional municipal securities. For most VRDO issues, particularly those that fall within the Exempt VRDO category, the purchase contract is not executed until the issue closing date or the immediately preceding day.[6] Thus, in the vast majority of these issues, the Bond Delivery Period, the period between the purchase date and the closing date, is at most one business day. As issuers typically do not authorized the printing of the official statement in final form until the execution of the purchase contract, underwriters usually do not receive the official statement in final form until the closing date at the earliest and, in many instances, the printed version is not available until after the closing date, at which point the issuer has already delivered the Exempt VRDOs to the underwriters.

At the time Rule 15c2–12 was drafted, the industry's standard Bond Delivery Period was two or more weeks.[7] For example, the seven business day time frame of paragraph (b)(3) of Rule 15c2–12 presumably anticipated a typical Bond Delivery Period of at least one and one-half weeks, because the final official statement is generally expected to be available at least by closing of the underwriting transaction. Presumably, Rule G–32's official statement delivery obligation was premised, at least in part, on this industry standard.

In 1997, the Board launch a review of the underwriting process which focused on, among other things, the manner and timeliness of delivery of official statements from issuers to underwriters under Rule 15c2–12 and from underwriters to the Board of Rule G–36.[8] The Board found that, in some instances, issuers do not meet their contractual obligations entered into with underwriters pursuant to Rule 15c2–12 deliver official statements within seven business days after the date of final agreement to purchase, offer or sell the municipal securities. The Board noted that, if issuers are not meeting the current delivery requirement under Rule 15c2–12, it is possible that final official statements also are not being prepared in time to deliver to customers by settlement as required under Rule G–32.

Thus, the Board determined that, because the Bond Delivery Period for Exempt VRDOs is at most one business day, it is often not possible for dealers to settle with customers, who expect to receive delivery of their securities on the issue date, without causing a violation of the requirement that they deliver the official statement in final form to such customers by settlement. As a result, the Board amended Rule G–32 to permit a dealer, selling new issue Exempt VRDOs, to deliver the official statement in preliminary form to the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 39900 (April 22, 1998), 63 FR 23315.

[4] *See* letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, SEC, dated May 19, 1998.

[5] Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28700 (July 10, 1989).

[6] This compressed time frame arises as a result of the fact that, as securities bearing short-term yields sold at par, the market dictates that pricing (*i.e.*, the setting of the interest rate borne by the securities during the initial rate period) and settlement occur on a same-day or next-day basis.

[7] Standard industry practice dictated that issuers deliver the securities to the underwriters two or more weeks after the sale date for the securities.

[8] *See* MSRB Reports, Vol. 17, No. 2 (June 1997) at 3–16.

customer by settlement, together with a written notice that the official statement in final form will be sent to the customer within one business day of receipt. Thereafter, once the dealer receives the official statement in final form, it must send a copy to the customer within one business day of receipt. If no official statement in preliminary form is being prepared, the dealer would only be obligated to deliver by settlement the written notice regarding the official statement in final form and to send the official statement in final form upon receipt.[9]

The amendment provides an alternate method of compliance with Rule G–32 in the case of Exempt VRDOs where the final official statement is either unavailable or incomplete. However, in those limited circumstances where dealers may in fact receive the official statement in final form in sufficient time to deliver it to customers by settlement (*e.g.*, if an issuer approves completion of the official statement in final form prior to execution of the purchase contract), dealers must comply with the existing provision of the rule by delivering the official statement in final form to the customer by settlement. If the final official statement is available or if the issuer approves the final official statement prior to settlement, then the existing provision of the rule would control. The dealer's compliance in this case would not be optional.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgate thereunder.[10] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[11] of the Act. This proposed rule change should remove any potential timing discrepancies concerning dealer and customer receipt of official statements. The rule clarifies dealers' disclosure requirements; if a dealer receives an official statement from the issuer, concerning exempt VRDOs, then it must deliver this official statement within one business day of receipt.

The Commission recognizes the Board's effort to make the disclosure requirements in Rule G–32 consistent with the requirements delineated in Rule 15c2–12 under the Act. The Commission understands that the use of securities with a demand feature (*e.g.* VRDOs) allows issuers to acquire the necessary financing while protecting against interest rate risk. These types of obligations permit the issuer to convert outstanding debt from short-term variable rate notes to long-term fixed rates.[12] It is possible that the maturities or reset dates of these VRDOs could be so brief (*i.e*, one day) that the issuer is unable to provide an official statement at settlement. Given the sophisticated nature of these instruments and the rapidity with which they can be converted, the Commission urges dealers to facilitate full and timely disclosure to investors. While the requirements of Rule 15c2–12 are inapplicable to these obligations, sound business practice and general antifraud provisions of the federal securities laws should dictate access to and disclosure of information covered by this rule.

IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provision of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–MSRB–98–04), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19445 Filed 7–21–98; 8:45 am]

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[9] As in the current rule, if no official statement in final form is being prepared, such dealer would deliver to the customer by settlement the official statement in preliminary form, if any, and written notice to the effect that an official statement in final form is not being prepared. If neither a final nor a preliminary official statement is being prepared, the dealer would only be obligated to deliver by settlement the written notice to the effect that no official statement in final form is being prepared.

[10] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The amendment conforms the requirements of MSRB Rule G–32 with those of SEC Rule 15c2–12. Making the rules consistent lessens the dealers' burden of complying with one rule while attempting to avoid violating the other. Also, the dealer's procedural and operational efficiency should be enhanced as the date for determining compliance will be that of receipt of some type of notification from the issuer, which should make for ease of recordkeeping and review. 15 U.S.C. 78c(f).

[11] Section 15B(b)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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.

[12] *See supra* note 5 at p. 28810.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40211; File No. SR–NASD–98–21]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change to Permanently Expand the NASD's Rule Permitting Market Makers to Display Their Actual Quotation Size

July 15, 1998.

I. Introduction

On March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] to amend NASD Rule 4613(a)(1)(C) permanently to allow market makers to quote their actual size by reducing the minimum quotation size requirement for all Nasdaq securities to one normal unit of trading ("Actual Size Rule" or "ASR").[3] The Commission issued the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Concurrent with the March 5, 1998, filing, NASD Economic Research published an economic study entitled "Evidence from the Pilot Expansion on November 10, 1997, and the Market Stress of October 27 and 28, 1997" ("March 1998 Study"). This study followed an earlier study the NASD conducted to analyze the effects of the Actual Size Rule entitled "Effects of the Removal of Minimum Sizes for Proprietary Quotes in The Nasdaq Stock Market, Inc." ("June 1997 Study"). The findings the NASD made in each of these studies are discussed below. Both studies were made publicly available through the NASD's web site.

On January 10, 1997, the Commission approved an NASD proposal to implement the Actual Size Rule on a pilot basis from January 20, 1997 through April 18, 1997. Exchange Act Release No. 38156, 62 FR 2415 (January 16, 1997) (SR–NASD–96–43). Under the initial three-month pilot, Nasdaq market makers could quote in minimum sizes of 100 shares in the 50 Nasdaq securities subject to mandatory compliance with Exchange Act Rule 11Ac1–4 ("Limit Order Display Rule"). The remaining Nasdaq securities were still subject to the existing minimum quotation display requirements for proprietary quotes.

On April 15, 1997, the Commission approved an NASD proposal that extended the 50-stock pilot from April 18, 1997 to July 18, 1997. Exchange Act Release No. 38512, 62 FR 19373 (April 21, 1997) (SR–NASD–97–25). On July 18, 1997, the Commission approved the NASD's request to extend the 50-stock pilot from July 18, 1997 to December 31, 1997. Exchange Act Release No. 38851, 62 FR 39565 (July 23, 1997) (SR–NASD–97–49).

On October 29, 1997, the Commission approved the NASD's proposal to extend the pilot from December 31, 1997 through March 27, 1998, and to

proposed rule change for comment on March 16, 1998.[4] For the reasons discussed below, the Commission is approving the proposed rule change.[5]

II. Background

A. The SEC's Order Handling Rules and the Actual Size Rule Pilot Program

On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rules,[6] and adopted amendments to the Quote Rule[7] which together are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the "Order Handling Rule").[8] The SEC's Limit Order Display Rule generally requires a market maker to display customer limit orders that (1) are priced better than a market maker's quote, or (2) add to the size associated with a market maker's quote when the market maker is at the best price in the market.[9] The Limit Order Display Rule gives investors the ability to directly advertise their trading interest to the marketplace, enabling them to trade inside the current bid-ask spread and thereby compete with market maker quotations and narrow the size of the bid-ask spread. The Order Handling Rules amended the SEC's Quote Rule to require a market maker to display in its quote any better priced orders that it places into an ECN such as the NASD's SelectNet service ("SelectNet") or Instinet.[10] Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN (1) ensures that the best priced orders entered by market makers into the ECN are included in the public quotation, and (2) provides "equivalent" access[11] to the ECN for brokers and dealers that do not subscribe the ECN, so that those brokers and dealer may trade with orders entered into the ECN.[12]

On January 10, 1997, the Commission approved certain amendments to Nasdaq's Small Order Execution System ("SOES") and SelectNet to help implement the Order Handling Rules and accommodate changes in the Nasdaq market that these rules brought about. For instance, the Commission approved, on a temporary basis, the Actual Size rule for the first 50 securities subject to the Order Handling Rules. Under the Actual Size Rule pilot, Nasdaq market makers were only required to display a minimum quotation size of one normal unit of trading (100 shares) when quoting solely for their own proprietary accounts in the first 50 securities. Market makers could display a grater quotation size if they chose to (or if required to do so by the Limit Order Display Rule). For Nasdaq securities other than the first 50, minimum quotation size requirements of 1,000, 500, or 200 shares continued to apply.[13] Neither the minimum quotation size requirements nor the Actual Size Rule negate a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 or more shares, for example, it must display a quote size reflecting the size the customer's order, absent an exception to the Limit Order Display Rule.

In its finding with the Commission proposing the initial Actual Sizes Rule pilot, the NASD contended that changes to the dealer market brought about by the Order Handling Rules rendered mandatory minimum quote sizes unnecessary. The NASD also contended that economic theory suggested the Actual Size Rule could result in long-term benefits such as increased competition. Finally, the NASD's noted that empirical research indicated that neither investors nor the Nasdaq market would be adversely impacted by the Actual Size Rule. Specifically, the NASD argued that the Actual Size Rule would give market makers more flexibility to manage risk and quote prices more favorable to small retail investors. In addition, the NASD argued that requiring a minimum commitment of market maker capital while allowing ECNs and investors (including professional "day traders") to display their orders without imposing a similar minimum size commitment on them could severely impair market makers' ability to set competitive quotations.

April 11, 1997, the NASD filed a proposal with the Commission to extend the pilot until at least December 19, 1997, and to expand the number of stocks in the pilot to include the next 100 stocks subject to the Order Handling Rules.[14] In that filing, the NASD indicated that its research department had studied the effects of the Order Handling Rules and the Actual Size Rule and found that: (1) The Order Handling Rules dramatically improved the quality of the Nasdaq market by, among other things, narrowing quoted spreads; (2) among those securities subject to the Order Handling Rules, there was no appreciable difference in market quality between stocks subject to the Actual Size Rule and stocks subject to mandatory quote size requirements; and (3) implementation of the Actual Size Rule did not significantly diminish the ability of investors to receive automated executions through SOE, Select Net, or proprietary systems operated by broker-dealers.[15] Based on these findings, the NASD concluded that mandatory quote size requirement were no longer needed.[16]

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expand the pilot to 150 Nasdaq securities. Exchange Act Release No. 39285, 62 FR 59932 (November 5, 1997) (SR–NASD–97–26). On March 25, 1998, the Commission approved the NASD's proposal to extend the 150-stock pilot from March 27, 1998 through June 30, 1998. Exchange Act Release No. 39799, 63 FR 15467 (March 31, 1998) (SR–NASD–97–26).

[4] Exchange Act Release No. 39760 (March 16, 1998) 63 FR 13894 (March 23, 1998) (File No. SR–NASD–98–21).

[5] The text of the rule, as adopted, is as follows:

NASD Rule 4613 Character of Quotations

(a) Two-Sided Quotations

(1) No change.

(A)–(B) No change.

(C) A registered market maker in a security listed on The Nasdaq Stock Market must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

[6] 17 CFR 240.11Ac1–4.

[7] 17 CFR 240.11Ac1–1.

[8] Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996). With respect to Nasdaq securities, the Order Handling Rules were implemented according to the following schedule: 50 Nasdaq securities became subject to the rules on January 20, 1997; 50 more securities became subject to the rules on February 10, 1997; and an additional 50 securities became subject to the rules on February 24, 1997. The remaining Nasdaq securities wee phased in by October 13, 1997. Exchange Act Release No. 38490 (April 9, 1997) 62 FR 18514 (April 16, 1997); and Exchange Act Release No. 38870 (July 24, 1997) 62 FR 40732 (July 30, 1997).

[9] In the alternative, a market maker may immediately execute the order or delivery the order to an exchange or national securities association sponsored system or an electronic communications network ("ECN") that complies with the "ECN Display Alternative," as described below.

[10] This amendment is known as the "ECN Rule."

[11] Access must be "[e]quivalent to the ability of any broker-dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the exchange or association to which the [ECN] supplies such bids and offers." SEC Rule 11Ac1–1(c)(5)(ii)(B)(*1*).

[12] This alternative is known as the "ECN Display Alternative."

[13] In particular, NASD Rule 4613(a)(2) required each market maker in a Nasdaq issue other than those in the first 50 to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*i.e.*, 1,000, 500 or 200 shares for Nasdaq National Market securities and 500 or 100 shares for Nasdaq SmallCap Market securities).

[14] *See* Exchange Act Release No. 38513 (April 15, 1997) 62 FR 19369 (April 21, 1997) (SR–NASD–97–26).

[15] *Id.*

[16] Release No. 39285, *supra* note 3, 62 FR at 59936–37. The NASD subsequently amended the

Continued

On June 3, 1997, the NASD supplemented its proposal with its first comprehensive study of the potential impact of the Actual Size Rule on stocks for which the mandatory size minimum quote requirements were relaxed ("pilot stocks"). The results of the study indicated that implementing the Actual Size Rule did not adversely affect the market quality of pilot stocks. The June 1997 Study analyzed standard measures of market quality, including spread, volatility, liquidity, and depth. In addition, the study examined investors' ability to access market maker capital through SOES and proprietary automatic execution systems. The study suggested that for pilot stocks, investors continued to have reasonable and substantial access to market maker capital through automatic execution systems.[17] To provide the public with an opportunity to review and comment on the June 1997 Study, the Commission extended the comment period on the NASD's proposal until July 3, 1997.[18] On July 17, 1997, the NASD amended the filing at the Commission's request to extend the pilot until March 27, 1998, to give the Commission more time to evaluate the economic studies on the proposal and to review comments on the June 1997 Study.[19]

Notwithstanding the results of the June 1997 Study, some commenters expressed concerns about the proposal to expand the Actual Size Rule. In particular, some commenters noted that the pilot had been limited to only 50 Nasdaq securities and that these securities generally represent the most liquid Nasdaq stocks.[20] In addition, the proposed expansion of the Actual Size Rule would apply to those 100 stocks that were subsequently phased in under the Order Handling Rules. Those stocks were also drawn from the most liquid Nasdaq stocks. Thus, it was argued that, even an expanded pilot would still be skewed toward larger, more active issues.

On September 15, 1997, in response to these concerns, the NASD amended its proposal to change the selection methodology for the next group of securities to be subject to the pilot to provide an enhanced sample that better represents the entire Nasdaq market.[21] Specifically, the remaining Nasdaq National Market issues were divided into deciles based on average daily dollar volume. One hundred and ten stocks were then chosen by randomly selecting approximately the same number from each decile.[22] As expanded, the pilot provided additional data across a range of securities, thereby permitting an enhanced evaluation of the effects of the Actual Size Rule pilot.

On October 29, 1997, the Commission approved the NASD proposal, as amended, to expand the Actual Size Rule pilot to include 150 stocks and to extend the pilot through March 27, 1998.[23] In approving the proposal, the Commission stated its belief that the preliminary data indicated that the pilot had not resulted in any degradation to Nasdaq market quality, and that the Actual Size Rule appeared to be a reasonable means to provide market making obligations that reflect the new market dynamics produced by the Order Handling Rules.[24] Nonetheless, the Commission decided that it would be appropriate to consider additional data that could be gathered using the more representative sample of Nasdaq stocks before determining whether to expand the Actual Size Rule to the entire Nasdaq market.[25]

The Commission asked the NASD to continue evaluating the effects of the Actual Size Rule and identified several areas to be analyzed.[26] The Commission also asked the NASD to compare data among deciles of Nasdaq stocks, focusing attention on active versus inactive stocks. In response, the NASD produced a second study ("March 1998 Study") which addressed the effects of the Actual Size Rule, as expanded.

B. Findings of the NASD's March 1998 Study

In the March 1998 Study, the NASD sought to determine the impact of the Actual Size Rule on Nasdaq market quality and on investors' access to automatic execution systems (including SOES). To do so, it compared securities subject to the Actual Size Rule's 100-share minimum quote size with a control group of peer stocks still subject to mandatory minimum quote size requirements. The March 1998 Study compared these two groups of securities after the Order Handling Rules had been fully implemented, thus, quote size was meant to be the only significant difference between the two groups of securities.

The study compared measures of market quality for a group of stocks that joined the pilot (pilot stocks) to a control group of peer stocks (non-pilot stocks) that remained subject to mandatory minimum quote sizes.[27] Like the June 1997 Study, the March 1998 Study concluded that the Actual Size Rule had no material effect on Nasdaq market quality or investors' access to automatic execution systems (including SOES).[28]

1. The Actual Size Rule's Impact on the Quality of the Nasdaq Market

The NASD analyzed several measures of market quality in the March 1998 Study: spread, volatility, depth, and liquidity. Each of these measures is discussed below.

a. Spread Measures

The NASD used two methods to calculate spreads: quoted dollar spread[29] and effective spread.[30] The "quoted dollar spread" of the pilot stocks fell 3.8% from a time before the Actual Size Rule was implemented to a time when it applied to the securities in the sample. The quoted dollar spread for the non-pilot stocks fell 4.8% over the same period. Based on a multivariate

filing to change the extension date from December 19, 1997 to March 27, 1998, and to change the selection methodology for the next group of 100 stocks to be subject to the pilot. The methodology used to determine the next 100 securities is discussed further below.

[17] *See* Exchange Act Release No. 38720 (June 5, 1997) 62 FR 31856 (June 11, 1997).

[18] *Id.*

[19] *See* Exchange Act Release No. 38872 (July 24, 1997) 62 FR 40879 (July 30, 1997).

[20] *See, e.g.*, letter from David K. Whitcomb, Professor of Finance, Rutgers University, to Jonathan Katz, Secretary, SEC, dated July 3, 1997.

[21] *See* letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, SEC, dated September 15, 1997.

[22] One hundred and ten stocks were chosen to replace four of the original stocks that were delisted, to accommodate possible delistings, and to ensure that 150 stocks would be available under an expanded Actual Size Rule pilot.

[23] Release No. 39285.

[24] *Id.* at 59936.

[25] On March 25, 1998, the Commission approved a rule change proposed by the NASD to extend the pilot from March 27, 1998 through June 30, 1998. Exchange Act Release No. 39799, 63 FR 15467 (March 31, 998) (SR–NASD–97–26).

[26] In particular, the Commission asked the NASD to analyze: (1) the number and composition of the market makers in each stock; (2) the average aggregate dealer and inside spread; (3) the average spread of each market maker by stock; (4) the average depth by market maker (including limit orders) and any change in depth over time; (5) the fraction of volume executed by each market maker that is at the inside quote per stock; and (6) the amount of volume required to move the price of each security one increment. Release No. 39285, *supra* note 3, at 62 FR 59937.

[27] The study reviews data for 18 trading days between October 13, 1997 and November 7, 1997, (October 27, 1997 and October 28, 1997, are excluded and analyzed separately) and compares this data to 20 trading days between November 10, 1997 and December 9, 1997.

[28] *See* March 1998 Study at 84–89.

[29] Quoted dollar spread is the difference between the inside ask and inside bid. Individual dollar spreads were weighted by the amount of time each spread was in effect for the day, *i.e.*, the spread's duration.

[30] Effective spread is twice the absolute difference between the trade price and the bid-ask midpoint ("BAM"). Thus, the effective spread is intended to account for trades executed at prices inside the spread.

regression analysis performed by the NASD, which controlled for stock-specific changes in volume, price, and interday volatility, the NASD concluded that the decrease in the quoted dollar spreads of the two groups of securities is statistically insignificant.

The "effective spread" (for trades of all sizes) of the pilot stocks fell 2.6% post-implementation, while the effective spread for the non-pilot stocks fell 5.7%. The NASD performed a multivariate regression analysis and concluded that the difference between the declines in the effective spreads for the two groups of stocks is statistically insignificant. Thus, under either spread measure, the NASD's statistical data suggests that the Actual Size Rule did not have a material adverse impact on the spreads for ASR securities compared to non-ASR securities over the period of the study.

b. Volatility

Intraday volatility decreased slightly between the pre- and post-implementation periods for both the pilot stocks and non-pilot stocks. Mean volatility fell 5.8% for the pilot stocks and 3.4% for the non-pilot stocks. Again, the NASD performed a multivariate regression analysis and concluded that this difference is statistically insignificant. Thus, the NASD's data suggests that implementing the Actual Size Rule did not materially adversely impact the intraday volatility of ASR securities compared to non-ASR securities over the period of the study.

c. Depth

The NASD's study also looked at the number of shares Nasdaq market makers were willing to quote at the inside market using a measure called "mean aggregate quoted depth." Using this measure, the amount of depth provided by market makers at the inside market dropped by 5.2% for the pilot stocks, and by 5.8% for the non-pilot stocks. When ECN quotes at the inside are included, mean aggregate quoted depth fell by 2.0% for the pilot stocks and by 2.7% for the non-pilot stocks. Again, based on multivariate regression analysis performed by the NASD, these differences are not statistically significant. Thus, the NASD data suggests that the Actual Size Rule did not materially adversely impact the depth of pilot securities compared to non-pilot securities over the period of the study.

Furthermore, neither the mean number of market makers nor the mean number of market makers at the inside changed significantly for either stock group after implementation.

d. Liquidity

While liquidity is an important element of market quality, it is difficult to measure empirically. A common liquidity measure is "effective depth" [31] or the amount of volume it takes to move the spread a predetermined amount in one direction or the other. A refinement to effective depth, called "normalized effective depth," makes the measure more precise across varying stock prices.[32] Using this measure of liquidity, the NASD concluded in the March 1998 Study that the Actual Size Rule did not materially adversely impact the liquidity of pilot securities compared to non-pilot securities over the period of the study.

2. Actual Size Rule's Impact on Investors' Access to SOES

In the March 1998 Study, the NASD also analyzed the potential impact of the Actual Size Rule on investors' access to market makers through SOES or broker-dealers' proprietary automatic execution systems. According to the NASD, the data suggests that implementation of the Actual Size Rule has not materially adversely impacted investors' ability to access Nasdaq market makers through these systems.[33] Specifically, the NASD found that 98.5% of SOES orders in the pilot stocks were fully executed at a single price after these stocks became subject to the Actual Size Rule. The NASD also found that for the non-pilot stocks, 98.9% of SOES orders were fully executed at a single price, a statistically insignificant difference. The average size of an executed SOES order in the pilot stocks fell by 18 shares after the expansion of the pilot program; for the non-pilot stocks, the average size of an executed SOES order fell by 23 shares. The NASD concluded that this is a statistically insignificant difference.

The NASD also studied broker-dealer automatic proprietary execution systems. The March 1998 Study analyzed data from nine broker-dealers ("Participant Firms") [34] and found that these systems constitute a significant proportion of trading activity by the Participant Firms. The March 1998 Study found no evidence that the Actual Size Rule had any effect on these systems' activity. Specifically, the mean number of automatic execution trades as a percentage of all trades for Participant Firms increased from 37.8% to 38.4% for the pilot stocks and from 34.5% to 36.2% for the non-pilot stocks. The mean automatic execution volume as a percentage of all volume for the pilot stocks increased from 30.8% to 31.2%; for the non-pilot stocks, it increased from 27.8% to 29.5%. These differences were not statistically significant. Based on the March 1998 Study, the NASD concluded that the implementation of the Actual Size Rule did not materially adversely impact the average SOES trade size or investors' access to market makers through SOES or broker-dealer proprietary systems in pilot versus non-pilot stocks over the period of the study.

The extreme market conditions of October 27 and 28, 1997, provided another test of the potential impact of the Actual Size Rule on the Nasdaq marketplace. On October 27, 1997, the Nasdaq Composite Index fell by 7.02% and cross-market circuit breakers were implemented. On October 28, 1997, the Nasdaq Composite index declined by 4.37% by 9:41 a.m. before rebounding and ending up 4.43% for the day. Both days experienced record trading volume. The March 1998 Study compared the market quality (as measured by spreads, volatility, depth, and liquidity, as discussed above) and investor access to SOES (and other automatic execution systems) for a group of the original pilot stocks with that of a group of peer stocks subject to minimum quote size requirements. The NASD concluded in the March 1998 Study that the Actual Size Rule had no material adverse impact on market quality during this period of intense market stress. Further, the NASD concluded that investors' ability to access market maker capital for pilot stocks versus non-pilot stocks was not materially adversely impacted during this period.

III. Comment Letters

The Commission received 274 comment letters from numerous entities, including market makers, full service broker-dealers, order entry firms, SOES traders, academics, individual investors, professional associations, and a national securities exchange. Of these, 53 favored the Actual Size Rule, 218 opposed it, and three did not clearly state a position. Proponents included representatives of the market maker and institutional trading communities. Among opponents were numerous individuals associated with day trading

[31] *See. e.g.*, March 1998 Study at 78.

[32] These measures are described fully in the NASD's March 1998 Study at 77–84.

[33] Roughly 85% of orders in the tested group of pilot stocks during the periods analyzed by the March 1998 Study were for the tier size maximum, *i.e.*, 1,000 shares. This proportion did not materially change after these stocks became subject to the Actual Size Rule.

[34] The participant firms were: Goldman, Sachs & Co.; Herzog, Heine, Geduld, Inc.; Knight Securities, L.P.; Bernard L. Madoff Investment Securities; Mayer & Schweitzer, Inc.; Prudential Securities, Inc.; PaineWebber, Inc.; Smith Barney, Inc.; and Troster Singer Stevens Rothchild Corp.

firms and users of the SOES system. Although opponents of the proposal raised concerns about the effects of the Actual Size Rule on access to executions and market maker capital as well as the proposal's impact on market factors including liquidity, volatility, and spreads, proponents countered that the proposal would enable market makers to manage risk better and to provide capital to the market more efficiently. The NASD also submitted a letter addressing the comments the Commission received.[35]

The Commission has considered all of the comments it received on the proposal. Due to the large number of comment letters, a complete, separate summary of comments has been prepared and is available in the public file. The most significant comments are discussed below.

A. Comments Favoring the Actual Size Rule

Of the 274 comment letters the Commission received, 53 support permanent expansion of the Actual Size Rule. Among these are letters from trade groups such as the Security Traders Association ("STA"),[36] the Securities Industry Association Industry Association ("SIA"),[37] and the Investment Company Institute ("ICI"),[38] as well as numerous brokerage firms.[39] The Commission also received a comment letter from American Century Investment Management ("ACIM") supporting the proposal.[40] Generally, a number of market participants stated that the NASD's data and analysis—including its conclusions based on both economic theory and empirical results—is consistent with the marketplace's experience with the Actual Size Rule.[41]

Proponents of the Actual Size Rule contend that the rule contributes to a more efficient and transparent market—a market that, ultimately, benefits investors. Several commenters state that the Actual Size Rule aids their market making activities and allows them to better serve their customers.[42] One firm states that it has "become more active in the stocks under the Pilot program due to [its] ability to properly manage [its] capital risk."[43] Several commenters note that by cutting barriers to entry, the Actual Size Rule should encourage market maker participation, including that of smaller firms.[44] Further, several commenters believe that market makers' ability to commit capital more freely will enhance pricing efficiency and the competitiveness of dealer quotations, and increased price competition and the entry of more market makers will help investors.[45]

In addition, one commenter, whose company's stock was in the pilot, cites benefits to his company's stock from pricing efficiencies.[46] Another commenter feels the Actual Size Rule is in the best interest of investors, including those households owning shares of equity mutual funds.[47] An institutional firm commented that the Actual Size Rule helps give a true look at the depth and quality of markets and helps to ensure fairer pricing of institutional blocks.[48]

In addition to creating a market that better represents trading interests, commenters feel the Actual Size Rule can make the Nasdaq market more competitive with other securities markets. One commenter notes that the Actual Size Rule could remove competitive burdens on Nasdaq market participants by leveling the playing field between primary markets in the United States.[49] Another commenter notes that if Nasdaq market making requirements were made more equivalent to other equity markets that do not have a 1,000 share quotation minimum, Nasdaq market makers could more efficiently price stock absent a multitude of "unnatural and unwanted positions."[50] One commenter posits that if, as studies show, market quality is maintained under the Actual Size Rule, Nasdaq should not be the only equity market forcing market makers to deploy capital to create artificial liquidity.[51]

Commenters also considered the impact of the Actual Size Rule on the Nasdaq market and the need for the Actual Size Rule in the context of more general changes to markets. Some commenters discussed what they perceive as a move from a quote to an order driven market due to institution of the Ordering Handling Rules.[52] For some, this perceived movement removes the need for a mandatory minimum size requirement.[53] Others note that mandatory minimum quote size gave investors access to the market, but now, through the Limit Order Display Rule, they have access by being able to impact stock prices and the size of quotes by displaying their limit orders.[54] In sum, several commenters feel that the Order Handling Rules make mandatory size requirements unnecessary by, among other things, providing a new source of liquidity.[55] Several commenters therefore believe that in this new, more order driven market, if a market maker mut display size greater than all other market participants, it may avoid being at the inside, which could reduce liquidity.[56]

Commenters also evaluated the Actual Size Rule's impact on market quality. For instance, several commenters argued that the Actual Size Rule enhances liquidity. Notwithstanding the NASD's data to the contrary, some commenters believe that liquidity improved for pilot stocks and can be further improved by expanding the Actual Size Rule.[57] One commenter believes that if the Actual Size Rule is permanently expanded, market makers should be able to make markets in more issues.[58] Another states that lower barriers to entry and fewer reasons to exit will increase liquidity.[59]

Some commenters believe that mandatory size requirements (which

[35] *See* NASD Response.

[36] The STA describes itself as having approximately 7,700 individual members.

[37] The SIA describes itself as being composed of nearly 800 securities firms, employing more than 380,000 individuals. The SIA also states that its members include investment banks, broker-dealers, and mutual fund companies that are active in all markets and in all phases of corporate and public finance.

[38] The ICI describes itself as the national association of the investment company industry. Founded in 1940, its membership includes 6,976 mutual funds, 447 closed-end funds, and 10 sponsors of unit investment trusts. Its mutual fund members represent more than 63 million individual shareholders and manage more than $5 trillion.

[39] The Chicago Stock Exchange, Inc. ("CHX") also submitted a letter, although it neither favored nor opposed adoption of the Actual Size Rule. *See* CHX Letter.

[40] ACIM Describes itself as managing over $70 billion for investors in the Twentieth Century, Benham, and American Century families of mutual funds.

[41] *See, e.g.*, Merrill Letter; Credit Suissee Letter; J.P. Morgan Letter; STA Institutional Letter; ICI Letter.

[42] *See, e.g.*, M.H. Meyerson Letter, Crawford, Letter.

[43] *See* M.H. Meyerson Letter.

[44] *See, e.g.*, JP Morgan Letter; Ohio Letter; Marino Letter; Merrill Letter; Knight Letter; 4/29 and 4/1 STA Letter; Jefferies Letter; Howard Letter' STANY Letter; and Weeden Letter.

[45] *See, eg.*, Cantor Letter; Morgan Letter; Knight Letter; STANY Letter; Credit Suisse Letter; Salmon Letter; Suntrust Letter; 3/6 and 4/1 Walters Letter; and Morgan Keegan Letter.

[46]

[47] *See* ICI Letter.

[48] *See* Weeden Letter.

[49] *See* Credit Suisse Letter.

[50] *See* Interstate Letter.

[51] *See* STA Institutional Letter.

[52] *See* Kinnard Letter; R. King Letter; Marino Letter; Singh Letter; STA Institutional Letter; and Lehman Letter.

[53] *See, e.g.*, NAIB Letter; Morgan Letter; Knight Letter; Salomon Letter; Morgan Keegan Letter; 4/29 and 4/1 STA Letters; Interstate Letter; STANY Letter; STA Institutional Letter; ICI Letter; Wood Letter; Credit Suissee Letter; and ITAP Letter.

[54] *See* Mortgan Letter; Interstate Letter; and Barone Letter.

[55] *See, e.g.*, M.H. Meyerson Letter.

[56] *See* Kaplowitz Letter.

[57] *See* American Century Letter; Anonymous Letter; and Morgan Keegan Letter.

[58] *See* Ohio Letter.

[59] *See e.g.*, Howard Letter; Lopez-Rodriguez Letter; TD Letter; and STANY Letter.

adoption of the Actual Size Rule would serve to reduce) increase volatility.[60] One commenter compares mandatory size to a free option for professional day traders using SOES that exacerbates the direction and velocity of price moves during times of high volatility.[61] A commenter from a company whose stock was in the pilot stated that when his company's stock became subject to the Actual Size Rule, SOES activity decreased, thus lessening volatility.[62] A similar comment was made by an official of a brokerage firm about securities subject to the Actual Size Rule.[63] Others felt that SOES abuses along with mandatory size cause volatility,[64] and that the Actual Size Rule could help reduce this excess volatility.[65]

Commenters also contemplate the legal justifications for approving the proposal. Some commenters note that neither the Exchange Act nor Commission rules require quote sizes larger than 100 shares.[66] Another notes that since the NASD's research indicates no harm to investors or the market by the Actual Size Rule, the absence of the Actual Size Rule renders market makers less competitive than ECNs and customer orders, neither of which have a minimum size requirement.[67] The commenter contends that this disparity violates Exchange Act Section 15A(b)(9), which prohibits NASD rules imposing burdens on competition that are not necessary or appropriate.[68]

Finally, proponents focus on empirical research from the pilot to support their contentions. Several commenters found the NASD's March 1998 Study reassuring because it found no adverse effects on market quality for the 150 securities subject to the Actual Size Rule pilot.[69] Another commenter notes that the pilot was well documented.[70] Another notes that the March 1998 Study is good because it was conducted after the implementation of the Order Handling Rules and assessed only one significant policy change for the pilot stocks—the implementation of the Actual Size Rule.[71] In addition, the March 1998 Study's finding of no adverse effect on market quality and investor access to capital led a commenter to conclude that the next logical step is an Actual Size Rule for all stocks.[72] In fact, commenters believed that given Nasdaq's findings, no justification exists under the Exchange Act, including Section 15A, for continued mandatory size.[73] Another commenter feels that because the study shows no harm to the market by the Actual Size Rule, no reasonable basis exists for the Commission to adopt larger and more punitive minimum quote requirements for Nasdaq market makers.[74]

B. Comments Opposing the Actual Size Rule

Two hundred and eighteen letters opposed permanent expansion of the Actual Size Rule. Many are from day-traders who regularly place SOES orders. The Electronic Traders Association ("ETA")[75] and David Whitcomb ("Whitcomb"),[76] Professor of Finance at Rutgers University, also opposed permanent expansion. The positions of ETA and Whitcomb are largely based upon Whitcomb's independent research on the impact of the Actual Size Rule.[77] Whitcomb and ETA each attached to their respective comment letters a December 31, 1997, economic study ("Simaan-Whitcomb Study") prepared by Yusif Simaan and Whitcomb.[78] This study is discussed in detail in part III.C. below.

Opponents of the Actual Size Rule question the proposal's ability to improve the market's transparency and efficiency. One commenter notes that when the Commission originally approved the NASD's mandatory quote size requirements, it criticized market makers for not quoting for more than 100 shares and believed that a mandatory quote size requirement would give investors greater access to market information on the depth of the market for a particular security.[79] Some commenters expressed concern that market makers underrepresent share size available.[80] Another was concerned that market makers do not fill their entire quoted size.[81]

Some commenters feel that if the elimination of the excess spread rule and the concomitant cut in market maker exposure did not encourage a market maker influx, then the Actual Size Rule will not.[82] Others do not see mandatory size as a barrier to market makers, but a way to eliminate "fair weather" market makers,[83] and fell that market do not need an incentive to take risks for which they already receive compensation.[84]

Some commenters view the Actual Size Rule as unfair because it removes a market maker responsibility while market markers continue to receive the same benefits for performing that function. In particular, some commenters note that market markers get several benefits, including the ability to sell short, special margin requirements, prestige and advertisement, spreads, and profits, and the possibility of more privileges from new systems in exchange for fulfilling their responsibility of providing liquidity and market stability, especially during volatile markets.[85] Some commenters argue that if the mandatory quote size requirement is eliminated, then market maker benefits also should be discontinued.[86] A commenter notes that market maker advantages allow them to profit or hedge long positions during declining markets, while individual investors rely solely on liquidity from market makers.[87]

Some commenters also worried that the Actual Size Rule could hurt Nasdaq's reputation, perhaps leading investors to turn away from Nasdaq.[88] Some commenters argued that the Actual Size Rule could also discourage

[60] *See* ITAP Letter; and Weeden Letter.

[61] *See* American Century Letter.

[62] *See* Crawford Letter.

[63] *See* Edward Letter.

[64] *See* Crowell Letter; and Weedon & Co. Letter.

[65] *See* NAIB Letter.

[66] *See* Salomon Letter; and TD Letter.

[67] *See* JP Morgan letter; *See also*, Bandler Letter; Barone Letter; Wilson-Davis Letter; M.H. Meyerson Letter; French Letter; Hughes Letter; and Knight Letter.

[68] *See* JP Morgan Letter; *see also* note 73 and accompany text.

[69] *See* Barone Letter; Kinnard Letter; Howard Letter; Lopez-Rodriquez Letter; M.H. Meyerson Letter; SIA Trading Letter; STA Institutional Letter; 4/29 and 4/1 STA Letters; and ITAP Letter.

[70] *See* American Century Letter.

[71] *See* Credit Suisse Letter.

[72] *See* Hughes Letter.

[73] *See* JP Morgan Letter; and Knight Letter.

[74] *See* Credit Suisse Letter.

[75] ETA is an association of about 50 order entry firms and others interested in trading via computer.

[76] Whitcomb is also President and CEO of Automated Trading Desk, Inc. ("ATD"). ATD provides software and services for automated and computer-assisted limit order trading.

[77] The ETA and Whitcomb each submitted several comment letters concerning the Actual Size Rule proposal and each incorporated these letters by reference in the last submission. The Commission has carefully considered all of the comment letters the ETA and Whitcomb submitted, but for ease of reference, only the last letter each submitted has been cited.

[78] Simaan is an Associate Professor of Finance at Fordham University. Simaan's research was supported by a grant from ETA. ATD supplied the data for and supported Whitcomb's research.

[79] *See* CHX Letter.

[80] *See* Klug Letter; Paracha Letter; and White Letter.

[81] *See* Leland Letter.

[82] *See* 4/2/98 Getz Letter; *see also* Marungo Letter; Williams Letter; Yoon Letter; ETA Letter; and Whitcomb Letter.

[83] *See* G. Hunter Letter.

[84] *See* Ghazi-Moghadam Letter.

[85] *See e.g.*, Andrews Letter; Gardner Letter; Ripoll Letter; Spencer Letter; Teitelman Letter; Thiagarajah Letter; Tieu Letter; Tom Letter; Truong Letter; Woods Letter; and Whitcomb Letter.

[86] *See* Bunda Letter, Klug Letter; and Truong Letter.

[87] *See* 4/2/98 and 3/23/98 Getz Letters.

[88] *See* Carpenter Letter and Dubey Letter.

companies, particularly small, innovative ones, from coming to Nasdaq, for fear that their stocks would not be adequately supported.[89]

Some commenters feel that past and current instances of market maker manipulation militate against giving market makers the benefits of the Actual Size Rule. They worry that the Actual Size Rule system may harm the markets generally by permitting market makers to post small sized quotes during large supply/demand imbalances when depth and liquidity are at a premium.[90] One commenter envisioned market makers manipulating the system to cut risk exposure[91] and another noted that thinly traded issues are the most likely to be subjected to abuse as a result of the Actual Size Rule.[92] Some commenters cite various past events indicating market maker problems like the publication of the Commission's Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market ("21(a) Report") and litigation and settlements involving the Nasdaq market and market Makers. Such a history of market maker abuses, they contend, undermines markets maker arguments relating to a competitive disadvantage resulting from mandatory size.[93] Moreover, commenters claims that historic and continuing abuses by market markers counsel against taking a change on the Actual Size Rule or providing further opportunities for manipulation.[94] For example, some commenters suggest that market makers use 100 share "customer order" at the inside to hold stocks,[95] and that they hinder the momentum of stock movements and give themselves time to back away from quotes.[96] In addition, some commenters contend that market have modified their trading behavior during the Actual Size Rule pilot and in bigger stocks to mask what may be the true adverse impact of the Actual Size Rule, should the Commission permanently approve it for all Nasdaq stocks.[97]

Opponents of the Actual Size Rule also focused on specific factors related to market quality. For instance, one commenter is uncertain whether the Commission should approve the Actual Size Rule at this time, arguing that liquidity is the near-exclusive function of market marker proprietary trading, unlike at exchanges where liquidity is mostly from persons other than specialists effecting transactions in their own accounts.[98] Some question the basic premise of an order-driven market, indicating that the market still is and needs to be a quote-driven, dealer market.[99]

One commenter contended that in an order driven environment, mandatory quote size requirements coupled with SOES ensure investors receive fair executions in extreme market conditions.[100] Another posited that customer orders cannot sustain the market, especially in times of duress.[101] Even if there is an order-driven market, some commenters reject removing market makers' basic quote size responsibility.[102] Other commenters claimed the NASD shows the ASR does not contribute to the narrowing of market maker spreads.[103] Commenters also expressed concern that the Actual Size Rule will harm market liquidity, perhaps leading to price fluctuations and unfair prices.[104] Commenters also question the NASD's evidence that the Actual Size Rule helps to lower barriers to market maker participation and thus aids liquidity and pricing efficiency.[105] In addition, commenters are concerned that the Actual Size Rule's effect on heavily-traded issues would differ from its effect on thinly-traded issues.[106] One commenter expressed concern about mysterious fluctuations of size with changed volume in particular stocks.[107] There was also concern about lesser known and start up issues where liquidity is low and volatility is high.[108] Some commenters suggest the Actual Size Rule can or does increase volatility.[109] Another commenter notes that volatility is particularly problematic for thinly traded securities.[110] Some commenters emphasize that the Actual Size Rule decreases liquidity in an especially negative way when volatility is high and market makers would likely take actions like dropping to a 100 share size.[111] Commenters worry that during volatile times, large sized orders would be executed at unfair prices on different tier levels as prices rise or fall.[112] Some commenters viewed the Actual Size Rule as legitimizing "backing away" by market makers.[113] Some felt the events of October 1997 illustrate the need for market makers to quote mandatory minimum size.[114]

C. The Simaan-Whitcomb Study

Because letters from the ETA and Whitcomb were the only letters that provided empirical data that conflicts with that in the NASD's studies, the Commission thought it appropriate to address these comments in greater detail. The ETA and Whitcomb comment letters make three basic assertions regarding the Actual Size Rule; (1) the body of empirical evidence suggests that both market quality and the ability of investors to use SOES has been adversely affected by the Actual Size Rule; (2) Nasdaq market making is not fully competitive, and hence conclusions that assume marketplace competition are invalid; and (3) the methodology employed in the analyses conducted by the NASD is flawed. Both letters rely heavily on the Simaan-Whitcomb Study, which states that its purpose is to present preliminary evidence on: (1) the percentage of the time that ECNs are alone at the inside bid or offer; (2) the aggregate "inside" quotation size of market makers and ECNs; and (3) the "odd-sixteenths" quotation behavior of ECNs and selected market makers.

The Simaan-Whitcomb Study first discusses its preliminary findings concerning the percentage of time ECNs are alone at the inside bid or offer.[115]

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[89] *See* A. Friedman Letter and Maschler Letter.

[90] *See* Arakawa Letter, Baldante Letter; Bhattacharyya Letter; Cook Letter; and Finn Letter.

[91] *See* Cianfrani Letter.

[92] *See* Carlsson Letter.

[93] *See* Aunio Letter and Samarasinghe Letter.

[94] *See* Downing Letter; Garza Letter; Klarsfeld Letter; Maschler Letter; Rock Letter; Romanow Letter; Rosen Letter; Singh Letter; Taub Letter; Wilson Letter; and Woods Letter.

[95] *See* Gallagher Letter; 4/2/98 Getz Letter; and Haber Letter.

[96] *See* Downing Letter; Mesh Letter; Roffman Letter; Rosenberg Letter; Stolker Letter; and Villanueva Letter.

[97] *See* Gussin Letter; Levin Letter; Nadan Letter; and Romanow Letter.

[98] *See* CHX Letter.

[99] *See* Andrews Letter; Barry Letter; and Davar Letter.

[100] *See* Fennell Letter.

[101] *See* Tom Letter.

[102] *See* Angelica Letter; Atreya Letter; Cianfrani Letter; Gleeson Letter; and Ripoll Letter; *see also* ETA Letter and Whitcomb Letter.

[103] *See* ETA Letter and Whitcomb Letter.

[104] *See, e.g.*, Andrews Letter; Crabb Letter; CHX Letter; ETA Letter; Foster Letter; Gorman Letter; Hollander Letter; M. Kallman Letter; Leffler Letter; Maschler Letter; Nemeroff Letter; Walker Letter; and Whitcomb Letter.

[105] *See* ETA Letter and Whitcomb Letter.

[106] *See, e.g.*, Arakawa Letter; Eisner Letter; Israel Letter; Rock Letter; Rudd Letter; and Williams Letter.

[107] *See* Valentine Letter.

[108] *See Francis Letter.*

[109] *See e.g.*, Downing Letter; Haber Letter; Letter; M. Lu Letter; Teitelman Letter; and Woods Letter.

[110] *See* A. Friedman Letter.

[111] *See e.g.*,Andrews Letter; J. Goldstein Letter; Pak Letter; Teitelman Letter; Wei Letter; Williams Letter; and CHX Letter.

[112] *See e.g.*,Atreya Letter; Pflugfelder Letter; Tom Letter; Truong Letter; Weber Letter; and West Letter.

[113] *See* Barry Letter and Kiefer Letter.

[114] *See e.g.*, Maschler Letter; McDonald Letter; Nadan Letter; Ryan Letter; Verbeke Letter; Weber Letter; Williams Letter; and Yoon Letter.

[115] If one or more ECNs (and no market makers) are the only firms quoting the best bid or offer for a particular security, then ECNs may be said to be alone at the inside (bid or offer) for that security.

The Simaan-Whitcomb Study states that:

On the one hand, this is evidence of the power of the Order Handling Rules, since any market maker filling a retail customer order (*e.g.*, pursuant to a payment for order flow arrangement with the customer's broker) must match the ECN price under "best execution" rules. On the other hand, retail customers whose brokers do not have preferencing arrangements with a dealer can be disadvantaged. Most retail brokers do not have direct order entry interfaces with ECNs, and orders sent to Nasdaq's SOES are rejected when no market maker is at the inside. Brokers seeking automated execution of customer orders must use SelectNet to "preference" the ECN, a somewhat cumbersome and time-consuming process..In a sense, the percentage of time ECNs are alone at the inside is a measure of a remaining imperfection in the Nasdaq market.[116]

Next, the Simaan-Whitcomb Study posits that the aggregate "inside" quotation size of market makers and ECNs (a measure of liquidity) has been harmed by the Actual Size Rule. The Simaan-Whitcomb Study relies on "aggregate truncated size" and "aggregate quoted size" to measure liquidity. The Simaan-Whitcomb Study claims that the NASD's liquidity measure is flawed for the following reason:

> The problem with [using the NASD's liquidity measure] is that infrequent very large bid sizes can have an inordinate impact on sample mean aggregate sizes. *This might be fine if these large quotes were "real", but NASD rules permit a dealer to decline to fill an order larger than 1000 shares even if the dealer's quote exceeds the order size.* Thus a more realistic measure of aggregate electronic liquidity is what we call "Aggregate Truncated Size", the sum over market makers of the portion of their quote sizes not exceeding 1000 shares. (Footnote omitted, emphasis added.)[117]

The ultimate point the Simaan-Whitcomb Study makes is that

> market makers will reduce their quotes on the side of the market that is experiencing stress when they are free to do so. Putting it differently, it appears that mandatory minimum quotation sizes to effectively force market makers to provide more liquidity to the market, especially in times of stress.[118]

D. The NASD's Response to Comments

By letter, the NASD responded to comments submitted with regard to the ASR proposal.[119] The NASD's letter primarily focused on the comments from the ETA and Whitcomb. The NASD argues that those commenters' empirical evidence is "incomplete," and that the Simaan-Whitcomb Study does not appropriately analyze the improved sample provided by the expansion of the pilot program. The NASD also disputes ETA's and Whitcomb's conclusions that the ASR reduced liquidity during extreme market conditions on October 27 and 28, 1997, and that the ASR diminished access through SOES to market maker capital.

The NASD also questions the basis for the commenters' beliefs about the marketplace, particularly the notion that it is not competitive. For instance, the NASD cites a lack of empirical evidence for the commenters' claims that the ASR would increase order flow preferencing. Moreover, the NASD emphasizes the experience of market participants suggesting an increasingly order driven market.

In addition, as discussed below, the NASD points out perceived flaws in the studies producing the research relied upon by Whitcomb and the ETA. Finally, the NASD defends the methodology employed for its own research as being more representative and complete than that used by its detractors.[120]

IV. Discussion

The Commission approved the Actual Size Rule on a pilot basis so that it could assess the effects of the rule on Nasdaq market quality and investor access to automatic execution systems over a several month long period. At the time the pilot was adopted, the Commission noted that it "preliminarily believes that the proposal will not adversely affect market quality and liquidity" [121] and that it "believes there are substantial reasons . . . to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driven market would be beneficial to investors." [122] The Commission also stated that, "based on its experience with the markets and discussions with market participants, [it] believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors." [123]

During the pilot, the Commission assessed the potential impact of the Actual Size Rule on the Nasdaq market and on investors over periods of relative market calm as well as over a period of sudden market volatility (*i.e.*, October 27–28, 1997). It also reviewed the NASD's two comprehensive studies on the Actual Size Rule. In these studies, the NASD analyzed the Actual Size Rule's impact on market quality and investors' access to capital, both before and after the full implementation of the Order Handling Rules. The Commission also reviewed studies funded by the ETA and hundreds of comment letters from investors, broker-dealers, trade groups, and others representing all constituencies in the marketplace. Based on this detailed record of empirical data and comments regarding the impact of an expanded Actual Size Rule, the Commission still believes that the Actual Size Rule will not adversely affect the quality of the Nasdaq market. Indeed, the Commission remains convinced that the Actual Size Rule removes a barrier to market making in the Nasdaq market, as well as a requirement that has been rendered unnecessary by the Commission's Order Handling Rules. As a result, the Commission believes that removing Nasdaq's minimum quote requirements is consistent with the Exchange Act. In particular, as discussed below, the Actual Size Rule is consistent with Sections 11A and 15A of the Exchange Act.

In 1990, the Commission approved an NASD proposal to require Nasdaq market makers to quote size "at least equal to the maximum size of an order eligible for automatic execution in SOES." [124] In doing so, the Commission noted that "[m]arket makers presently are willing to execute trades well in excess of the 100 share size that is typically displayed on NASDAQ" [125] and that size was not being reflected in their quotes to the public. In approving the proposal, the Commission noted that the minimum quote size requirements could help provide "a more realistic picture of the actual size of execution available and the depth of the market in each security." [126] This rationale for requiring Nasdaq market makers to quote at least 1,000 shares (or 200 or 500 shares for less active stocks) when exchange specialists need only quote 100 shares was pertinent to Nasdaq in 1990 when only market maker quotes established the Nasdaq inside spread and customer limit orders were rarely reflected in market maker quotes. The rationale has been removed by the successful implementation of the Order

[116] Simaan-Whitcomb Study at 6.

[117] *Id.* at 9.

[118] *Id.* at 13.

[119] *See* NASD Response.

[120] *Id.*; *see also* March 1998 Study at 64 for a detailed description of the methodology the NASD employed.

[121] *Id.*

[122] *See* Release No. 38156, *supra* note 3, 62 FR at 2423.

[123] *Id.* at 2424.

[124] *See* Exchange Act Release No. 28450 (September 18, 1990) 55 FR 39221 (September 25, 1990).

[125] *Id.*

[126] *Id.*

Handling Rules. The Order Handling Rules enable investors' limit orders and limit orders displayed on ECNs to set the Nasdaq inside quote, so that reliance solely on market makers' quotes is no longer necessary. Data has demonstrated that the Order Handling Rules have helped to narrow Nasdaq spreads considerably.[127]

As detailed by the NASD in the March 1998 Study, by permitting dealers to quote their true trading interest, the Actual Size Rule affords market makers more flexibility to manage risk. Removing minimum quote size requirements also will enable market makers to reflect size in their quotations based on business and market factors instead of regulatory imposed minimums. This, over time, should increase the information content of market makers' quotations. Further, requiring market makers to maintain a minimum quote size without imposing a similar commitment on ECNs or investors, which also may display quotes, could impair the ability of market makers to set competitive quotations. Such a result is antithetical to the intent of the Order Handling Rules: That market maker quotes, limit orders, and limit orders displayed on ECNs all compete to set the Nasdaq inside spread. The 1,000 share minimum also can be viewed as a barrier to entry of new firms to market making in Nasdaq securities.[128]

After reviewing the June 1997 Study, the Commission concluded that it "preliminarily believes that the data indicates that the pilot has not resulted in harm to the Nasdaq market."[129] Nevertheless, the commission decided that it would be appropriate to gather further data before determining whether to extend the Actual Size Rule to the entire Nasdaq market.[130] The Commission also noted that certain concerns raised by some commenters could be addressed by extending the pilot and expanding it to 150 securities. The Commission determined that based "upon the expanded pilot, the Commission will be in a better position to evaluate the impact of the Actual Size rule upon the Nasdaq market."[131] The Commission specifically asked the NASD to conduct a second study to analyze market quality measures (*i.e.*, spreads, volatility, depth, and liquidity) as well as investor access to market maker capital. The pilot was expanded to 150 Nasdaq securities on November 10, 1997, and extended to March 27, 1998.[132]

As the Commission requested, in this second study (the March 1998 Study) the NASD analyzed each market quality measure. This expanded pilot study permitted a more definitive comparison of pilot and non-pilot securities as a whole, providing a basis for a final conclusion concerning the Actual Size Rule's effect on Nasdaq securities and its effect on relatively active versus inactive securities. In response to concerns that the Actual Size Rule would cause a "reduction of liquidity during periods of stress,"[133] the NASD also included in the March 1998 Study an empirical analysis of trading on October 27 and 28, 1997, a period in which the U.S. securities markets experienced a significant degree of volatility.

The NASD's March 1998 Study led the NASD to conclude that there is no empirical evidence that the implementation of the Actual Size rule is associated with any degradation of Nasdaq market quality or of investors' access to automatic execution systems. Specifically, the NASD found no statistically significant empirical evidence that the Actual Size Rule negatively impacted spreads, depth, volatility, liquidity, or investors' access to automatic execution systems, even during October 27 and 28, 1997. These findings were consistent with those the NASD made in its June 1997 Study.

The Commission has analyzed carefully the NASD's methodologies and analyses and finds that they are reasonable, rigorous, and credible. The NASD's decision to study the expanded group of pilot stocks is appropriate, as is the NASD's choice of time periods used to study the Actual Size Rule's potential effects. The NASD analyzed various measures of market quality and investor access to automatic execution systems and explained in great detail how the data was generated, analyzed, and how it controlled for changes in stock-specific trading characteristics such as price, volume, and intraday volatility. Commenters were given ample opportunity to critique the NASD's studies and to conduct their own studies.

The Commission extended and expanded the pilot to give the NASD time to produce data that could be used to address concerns about the representatives of the original 50-stock pilot. The Commission is satisfied that the March 1998 Study has adequately addressed those concerns by studying a wider range of securities over a longer period. Based on those studies, the Commission is satisfied with the NASD's determination that the implementation of the Actual Size Rule did not cause any degradation of the Nasdaq marketplace or of investors' access to automatic execution systems.

In determining whether to approve the Actual Size Rule on a permanent basis, the Commission gave careful consideration to the many comments it received in addition to the empirical studies produced by the NASD. Many of the positive comment letters were from firms that either engage in market making activities or have retail or institutional customers they believe will benefit from perceived gains in competition. They believe that the Actual Size Rule aids their market making activities and allows them to better serve their customers. One firm states that it has "become more active in the stocks under the Pilot program due to [its] ability to properly manage [its] risk."[134] Several commenters note that by cutting barriers to entry, the Actual Size Rule should encourage market maker participation, including that of smaller firms.[135] These comments reflect the burdens of a minimum share requirement on market making and the potential benefits of the Actual Size Rule.

The Commission also received a comment letter from the ICI, a national association of the investment company industry, favoring the rule proposal. The ICI's membership includes 6,976 mutual funds, 447 closed-end funds, and 10 sponsors of unit investment trusts. It mutual fund members represent more than 63 million individual shareholders and manage more than $5 trillion.

Manyu of the Opposing comment letters were form firms or associations that benefit in some way from the mandatory minimum quote size requirements. For instance, the ETA—which represents about 40 order entry firms and others interested in trading via computer—opposes the Actual Size Rule.

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[127] *See* March 1998 Study; *see also* NASD Economic Research, "Implementation of the SEC Order Handling Rules," October 14, 1997 ("October 1997 Study"); and Simaan-Whitcomb Study at 4.

[128] The Commission believes there are substantial reasons to expect that once the Actual Size Rule reduces regulatory constraints on market maker capital commitment for all Nasdaq securities, it will become increasingly likely that, over time, barriers to entry for market making will be reduced.

[129] *See* Release No. 39285, *supra* note 3, 62 FR 59936.

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *See* Letter from Richard Y. Roberts, on behalf of the ETA, to Jonathan G. Katz, Secretary, SEC, dated October 30, 1997.

[134] *See* M.H. Meyerson Letter.

[135] *See, e.g.*, JP Morgan Letter; Ohio Letter; Marino Letter; Merrill Letter; Knight Letter; 4/29 and 4/1 STA Letter, Jefferies Letter; Howard Letter; STANY Letter; and Weeden Letter.

A number of the opposing comment letters were submitted by or on behalf of day traders. Not surprisingly, these commenters oppose the Actual Size Rule, which limits their ability to affect SOES executions large enough to maximize day trading strategies. Although the Commission weighed this small group of professional investors' concerns very carefully in determining whether to approve the proposal, ultimately the Commission has concluded that it is in the best interests of the majority of investors, as well as the markets, to permit Nasdaq to remove the minimum mandatory quote size requirements.[136] Thus, even though the Actual Size Rule may alter somewhat the dynamics of electronic trading in Nasdaq securities (offset, however, by the Order Handling Rules), the Commission believes that the Actual Size should operate evenhandedly to all investors, should not impose discriminatory or anti-competitive costs, and should not impair transparency. There is no basis for concluding that the Actual Size Rule was designed to benefit market makers at the expense of the Nasdaq market.

Nevertheless, the Commission gave serious consideration to the negative comment letters. First the Commission notes that several comment letters allege market maker abuses any try to relate them to the need for a minimum quote sized requirement. The Commission takes allegations of market maker abuse very seriously and has and will continue to monitor the NASD's surveillance of market-making activity very closely. None of the comment letters, however, provide any concrete evidence to suggest that such abuses are on-going or occur more frequently in securities subject to the Actual Size Rule than in the non-ASR securities. Moreover, the Order Handling Rules are a much more effective and market-oriented approach to prevent abusive quoting behavior than artificial quote size minimums, especially when combined with the NASD's enhanced market maker surveillance.

Some commenters expressed concern that the Actual Size Rule could hurt Nasdaq's reputation, perhaps leading investors to turn away from Nasdaq. Nasdaq's reputation and ability to compete without other markets will likely rest, however, on measures of market quality such a liquidity, volatility, depth, and spreads. As discussed above, the NASD's March 1998 Study suggests that such measures are not materially affected by the Actual Size Rule.

The Commission gave careful scrutiny to the Simaan-Whitcomb Study (which was attached to comments from Whitcomb and the ETA). Ultimately, however, the Commission finds the NASD's analysis more complete and persuasive. For example, for the reasons discussed below, the data analyzed in the NASD's March 1998 Study differs significantly from that analyzed in the Simaan-Whitcomb Study, as do the conclusions drawn by the NASD and the Simaan-Whitcomb Study's authors and the ETA.[137] In determining which conclusions deserve greater credence, the Commission compared the data sets the studies analyzed. The Commission also compared the economic analyses undertaken by the NASD and Professors Whitcomb and Simaan. As discussed below, the Commission gave greater weight to the NASD's study because it analyzed more securities for a longer period of time and used, the Commission believes, more rigorous economic tools to reach its conclusions.

The Simaan-Whitcomb Study analyzes Nasdaq trades and quotes for two, ten-day periods, one in September 1997 and one in October 1997. The NASD's March 1998 Study compares 18 trading days between October 13 and November 7, 1997, with 20 trading days between November 10 and December 9, 1997—a significantly larger sample of trading days.

Further, the Simaan-Whitcomb Study generally compares the "First 40" stocks (for which mandatory 1,000 share proprietary quote sizes were waived) with the "Second 40" (which are subject to minimum proprietary quote sizes of 1,000 shares).[138] The March 1998 Study compares a much larger sample of securities: the pilot stocks and a control group of peer stocks (the non-pilot stocks) that remained subject to mandatory minimum quote sizes. The pilot stocks group was a stratified random sample that was more representative of the entire Nasdaq marketplace than the 50 stocks that became subject to the Actual Size Rule on January 20, 1997.[139] The Simaan-Whitcomb Study does not analyze this improved sample, even though Whitcomb, one of the Simaan-Whitcomb Study's authors, earlier requested such sample improvements, urging the Commission to "insist that [the] NASD pick a stratified random sample that is balanced across stock groups."[140]

The Commission also discounted the Simaan-Whitcomb Study because it ignores significant changes to the NASD's rules. Specifically, the Simaan-

[136] The Commission recognizes that, under one possible economic theory, SOES day traders may have an impact on pricing efficiency (while imposing certain costs on market making). According to this theory, SOES day traders' ability to exploit a price disparity between different market makers' quotations may provide an incentive for market makers to monitor closely market information and to incorporate quickly that information into their quotations. An NASD study suggests, however, that day traders have a reduced role to play in pricing efficiency due to the SEC's Order Handling Rule. *See* October 1997 Study. Further, based on the NASD's March 1998 Study, the Actual Size Rule's impact on day traders—as measured by the percentage of SOES orders fully executed at a single price and by the average size of an executed SOES order—appears to be minimal. Finally, any minor impact the Actual Size Rule may have on day traders should be outweighed by the Actual Size Rule's likely long-term benefits to investors and the Nasdaq market, as discussed throughout this order.

[137] In addition, both the ETA and Whitcomb take issue with the economic theory discussed in the March 1998 Study. Briefly, Whitcomb argues that Nasdaq is an oligopolistic market and both the ETA and Whitcomb posit that the Actual Size Rule will not benefit Nasdaq as the NASD believes. The ETA and Whitcomb base these arguments primarily on their assertions that Nasdaq market makers do not engage in quotation price competition because of preferencing arrangements, among other things. They also argue that because Nasdaq market making is already very profitable there is no threat that market makers will drop Nasdaq stocks and therefore no need to provide the Actual Size Rule as an incentive. Neither the ETA nor Whitcomb offer any evidence, however, concerning either Nasdaq market makers' profitability or about preferencing.

[138] The first 50 stocks subject to the Order Handling Rules were also the first 50 stocks subject to the Actual Size Rule ("First 50"). The second group of 50 stocks subject to the Order Handling Rules ("Second 50") were used as a control group, since they were not initially subject to the Actual Size Rule. Both groups include 40 stocks selected from the first through fifth deciles of the 1,000 most active Nasdaq stocks. These two groups were used as peers by the NASD in its June 1997 Study and by Professors Simaan and Whitcomb in the Simaan-Whitcomb Study and are referred to as the "First 40" and the "Second 40." The remaining 10 stocks in the first tranche were roughly the top 10 stocks ("First 10") based on median daily dollar volume, and the remaining 10 from the second tranche were roughly stocks 11 through 20 ("Second 10"). Consistent with the Commission's request for a "matched pairs analysis," the First 10 and Second 10 are excluded from this analysis, because these groups do not demonstrate similar trading characteristics and hence cannot be properly compared. *See* Release No. 38156, *supra* note 3, at 62 FR 2425. Indeed, including the First 10 and Second 10 would likely produce skewed results. The market quality improvements produced by the Order Handling Rules, however, are apparent in both the First 10 and the Second 10. *See* June 1997 Study at 22.

[139] *See* March 1998 Study at Section III.C.2; *see also* Release No. 39285, supra note 3, 62 FR at 59937 (In that order, the Commission stated that 100 securities added to the pilot "include securities with significantly different trading volumes, so the NASD will be better able to assess the impact of the Actual Size Rule on the full panoply of Nasdaq stocks. This will further the evaluation of the Actual Size Rule and will assist the SEC in its determination as to whether to expand the pilot ultimately to all Nasdaq securities or to end it.").

[140] *See* Letter from David K. Whitcomb to Jonathan G. Katz, Secretary, SEC, dated July 3, 1997.

Whitcomb Study expresses concern that many investors do not have adequate access to SOES trades while an ECN is alone at the inside.[141] As an initial matter, this concern could exist whether or not the Actual Size Rule was approved, and its relevance to the size of a market maker's quote is questionable. Nevertheless, this concern was reduced by subsequent Nasdaq rule changes. In particular, on February 10, 1998, the Commission noticed a proposed change to NASD Rule 4730(b)(1) that became effective immediately, pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(e)(5) thereunder.[142] The NASD proposed the rule change to address problems associated with the rejection of orders in SOES when there is no market maker at the inside quote. Previously, under NASD Rule 4730(b)(10), an ECN quote that was the best bid or offer in a security would effectively halt executions in SOES. Orders that had execution priority before the ECN order became the inside bid or offer were rejected. Now, these orders will be held in a queue for 90 seconds to allow the market to create a new inside bid or offer.

The rule change operates when an ECN or a market participant with unlisted trading privileges is alone at the inside in a Nasdaq National Market security. In this situation, executable SOES orders that are in queue or received at that moment will be held for a specified period of time. This "hold time," initially set at 90 seconds, is the maximum life of an order. Holding the queued orders for 90 seconds will give other market makers time to adjust their quotes to create a new inside, join the ECN at its price, or allow the ECN to move away from the inside. If one of these conditions is met and the order is still executable, it will execute. If any of these conditions do not occur, however, the order will time out, under normal time-out processing, and be returned to the entering firm at the end of the 90-second maximum life of the order. Nasdaq SmallCap securities will continue to execute against the next available SOES market maker at the ECN price. This concern raised by the ETA and Whitcomb, while not a result of the Actual Size Rule, therefore has been reduced, because SOES orders have a longer opportunity to be executed when an ECN is at the inside market.[143]

The Simaan-Whitcomb Study also asserts that "market makers will reduce their quotes on the side of the market that is experiencing stress when they are free to do so." This assertion, which is provided without empirical support, is in conflict with the March 1998 Study's data and the NASD's analysis showing that liquidity and depth for both Actual Size Rule and non-ASR stocks was substantially the same.[144] Given that the better analysis of the data produced by the pilot indicates that the Actual Size Rule affected the liquidity and depth of pilot and non-pilot securities similarly, the Simaan-Whitcomb Study's concerns about liquidity appear unfounded.

The March 1998 Study and the Simaan-Whitcomb Study also differ in their analysis of data concerning market quality measures. For example, as the NASD notes in its June 1, 1998, letter responding to commenters that criticized the NASD proposal,

> Both the ETA and Whitcomb Letters cite evidence contained in the Simaan-Whitcomb Study that purports to demonstrate that the Actual Size Rule reduced liquidity during the extreme market conditions of October 27 and 28, 1997. The analysis is based solely on aggregate quoted size—a limited measure of liquidity—and a flawed derivative measure, "aggregate truncated size." Based on these limited measures, the ETA and Whitcomb Letters conclude that investors experienced a reduction in access to market maker capital during October 27 and 28, 1997 due to the Actual Size Rule. A more direct analysis of the issue—involving actual SOES orders—was included in the [NASD's] March 1998 Study, which found that 98.1% of SOES orders in a group of Actual Size Rule stocks were fully executed at a single price during October 27 and 28, 1997, compared to 98.3% of SOES orders in a group of stocks not subject to the Actual Size Rule. (Footnotes omitted.)

In addition, the NASD notes that the liquidity measure called "aggregate truncated size" used in the Simaan-Whitcomb Study assumes quotes above 1,000 shares are not real. Use of this measure is based on a misunderstanding that "NASD rules permit a dealer to decline to fill an order larger than 1,000 shares even if the dealer's quote exceeds the order size."[145] As discussed above, market makers must honor their quotes even if they are for 1,000 shares or more.[146]

Moreover, as noted by the NASD in its June 1, 1998, letter, the Simaan-Whitcomb Study compares levels of quoted aggregate depth without controlling for stock price. Citing the Simaan-Whitcomb Study, the Whitcomb letter states that the average quoted depth of a group of stocks subject to the Actual Size Rule (*i.e.*, the First 40) constituted 80% to 85% of the average quoted depth for a comparable group of stocks not subject to the Actual Size Rule (*i.e.*, the Second 40). As the NASD notes, the Simaan-Whitcomb Study fails to consider that the First 40 stocks are more expensive than the Second 40 Stocks. According to the NASD, in January 1997, the average share price of the First 40 stocks was $39 and the average share price for the Second 40 stocks was only $34. The NASD concludes that the depth quoted by market makers is, therefore, similar for both groups in terms of dollars of capital committed. The Commission believes this conclusion is reasonable.

In addition, the letters from both the ETA and Whitcomb cite the Simaan-Whitcomb Study as well as a report submitted by the ETA regarding automatic executions in the Nasdaq marketplace ("ETA Report").[147] Whitcomb cites the ETA Report for the proposition that the completion rate for SOES orders fell for ASR securities but rose for non-ASR securities. The NASD argues that the ETA Report's measure is seriously flawed because it (1) includes orders that were actively canceled by the order-entry firm, which were a substantial majority of unexecuted orders, and (2) fails to account for substantial differences between trading characteristics of stocks included in the analysis.[148] The NASD concludes, and the Commission believes this conclusion is reasonable, that the evidence presented in the NASD's June 1997 and March 1998 Studies demonstrates that a substantial majority of SOES orders are fully executed at a single price level.

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[141] *See* Simaan-Whitcomb Study at 6-9.

[142] Exchange Act Release No. 39637 (February 10, 1998) 63 FR 8242 (February 18, 1998) (SR–NASD–98–05).

[143] The Commission also notes that in criticizing the NASD's liquidity measure in favor of the Simaan-Whitcomb Study's methodology, the Simaan-Whitcomb Study mischaracterizes a dealer's obligations under the Firm Quote Rule and NASD Rule 4613(b). *See* SEC rule 11Ac1–1 (Firm Quote Rule) and NASD Rule 4613(b). Both rules require market makers to honor their quotes even if those quotes exceed the mandatory minimum quotation size. The Simaan-Whitcomb Study's rationale for claiming that the liquidity measures it uses are better than the ones the March 1998 Study uses is therefore suspect.

[144] See March 1998 Study at 92–100.

[145] *See* Simaan-Whitcomb Study at 9.

[146] *See* note 143, *supra*.

[147] *See* ETA and DRI/McGraw-Hill, "Analysis of Automatic Executions on the Nasdaq Stock Market," May 1997, submitted as Attachment I of Letter from Richard Y. Roberts, on behalf of the ETA, to Jonathan G. Katz, Secretary, SEC, dated May 12, 1997.

[148] *See* Letter from Richard Ketchum, Chief Operating Officer, NASD, and Dean Furbuth, Chief Economist and Senior Vice President, NASD, to Jonathan G. Katz, Secretary, SEC, dated June 17, 1997.

This conclusion rebuts some commenters' assertions that it is difficult to fill orders over 100 shares close to the inside market without multiple executions, potentially occurring at different price levels.[149] The NASD concluded in the March 1998 Study, however, that

98.5% of SOES orders (98.3% of volume) were fully executed at a single price for pilot stocks after implementation of the Actual Size Rule. For non-pilot stocks, 98.9% of orders (98.8% of volume) were executed at a single price during this period. Multiple price SOES executions are rare for both groups; only 1.3% and 0.9% of SOES orders (1.5% and 1.1% of volume) were executed at multiple prices for the pilot stocks and non-pilot stocks, respectively, post-implementation. Clearly, the Actual Size Rule has had no measurable impact on SOES order disposition. (Footnotes omitted.)[150]

The March 1998 Study also made important findings that rebutted claims that investors' access to automatic executions was compromised by the Actual Size Rule. The March 1998 Study found that

As with Nasdaq's SOES system, proprietary autoexecution systems provide investors with immediate access to market maker capital through automatic executions at the inside market. Unlike SOES, however, these systems often automatically execute orders for sizes well above 1,000 shares, which is the largest SOES tier size. Also unlike SOES, these systems are operated at the discretion of the market maker, which generally sets size parameters for proprietary autoexecution systems. Parameters usually vary by stock and customer. Further, market makers determine which customers may use the systems. Accordingly, these systems are not perfect substitutes for SOES. The importance of these systems to individual investors should not be underestimated, however, because a number of the largest national brokerage houses use them to provide immediate, automated access to market maker capital.[151]

* * * * *

Like Nasdaq's SOES system, proprietary autoexecution systems provide investors immediate access to market maker capital. Indeed, the analysis of data provided by Participant Firms underscores the importance of these systems to the marketplace. The survey conducted by NASD Economic Research and empirical analysis of these data demonstrates that the Actual Size Rule has not impacted these important systems in any way.[152]

In sum, the Commission approved the NASD's rule change (to require Nasdaq market makers to quote at least 1,000 shares) in 1990 out of concern that market maker quotations at that time did not provide a realistic picture of execution size available and the depth of the market. The NASD's data shows that this is no longer the case. Thus, in light of the changes brought about by the Order Handling Rules, which have served to make the Nasdaq market significantly more order-driven, and the empirical research indicating no material adverse impact of the Actual Size Rule on investors or the Nasdaq market, and after carefully considering all of the comment letters, the Commission has concluded that minimum quotation sizes are no longer necessary and should be removed for all Nasdaq stocks.

The Commission therefore finds that the proposed rule change is consistent with the Exchange Act, including Sections 11A(a)(1)(C), 15A(b)(6), and 15A(b)(11). Specifically, Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of a national securities association 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 securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(11) requires that the rules of a national securities association be designed to produce fair and informative quotations and to prevent fictitious or misleading quotations, among other things.

As discussed above, the Commission believes that the Actual Size Rule should not have a material adverse impact on market spreads, volatility, depth, liquidity, or investor access. In addition, the Actual Size Rule should give market makers more flexibility to manage their risk. Removing the current minimum size requirements enables market makers to reflect size in their quotations based on market and business factors instead of a regulatory-imposed minimum. This should increase the information content of market makers' quotes. Finally, by removing the current regulatory size requirements, the Actual Size Rule removes a barrier to entry for making markets in Nasdaq securities. The Commission believes that the net long-term results of the Actual Size Rule should benefit market makers and investors without adversely affecting market quality.

V. Conclusion

For the reasons discussed above, the Commission finds that the NASD's proposal is consistent with the Exchange Act (specifically, Sections 11A and 15A of the Exchange Act) and the rules and regulations thereunder applicable to a national securities association and has determined to approve the NASD's proposal to amend NASD Rule 4613(a)(1)(C) permanently to allow Nasdaq market makers to quote their actual size by reducing the minimum quotation size requirement for Nasdaq market makers in all Nasdaq securities to one normal unit of trading.[153]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[154] that the proposed rule change, SR–NASD–98–21, be and hereby is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19436 Filed 7–21–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40200; File No. SR–NASD–98–33)]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment 1 Thereto Relating to Exemptions From Fidelity Bonding Requirements

July 14, 1998.

I. Introduction

On April 20, 1998, the National Association of Securities Dealers, Inc., ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities

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[149] *See, e.g.,* R. Chung Letter; Eisner Letter; Meurer Letter; Sanbeg Letter; Sherwood Letter; Wieser Letter; Wilson Letter; and Zatorski Letter.

[150] March 1998 Study at 87–88.

[151] *Id.* at 89.

[152] *Id.* at 90.

[153] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. As discussed above, the proposed rule likely will produce more accurate and informative quotations, increase competition, and encourage market makers to maintain competitive prices.

[154] 15 U.S.C. 78s(b)(2).

Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder [2] to grant authority to NASD staff to adjust the fidelity bond required of a member in certain circumstances. By letter dated May 27, 1998, the Association filed Amendment 1 to the proposed rule change.[3] The proposed rule change and Amendment 1 were published for comment in the **Federal Register** on June 10, 1998.[4] No comments were received. This order approves the proposal.

II. Description of the Proposal

Rule 3020 of the Conduct Rules of the NASD specifies that members are required to maintain fidelity bonds to insure against certain losses and the potential effect of such losses on firm capital. The rule applies to all members with employees who are required to join the Securities Investor Protection Corporation and who are not covered by the fidelity bond requirements of a national securities exchange. The amount of coverage a member is required to maintain is linked to the member's net capital requirements under Rule 15c3–1 under the Act.[5] Under paragraph (c) of Rule 3020, each member must annually review the adequacy of its fidelity bond coverage and maintain coverage that is adequate to cover its highest net capital requirement during the preceding 12 months. For example, even if a full-service member divests its clearing business, so that it no longer holds customer funds or securities, it would still be required to maintain bond coverage that is based on the higher net capital requirement that applied during the preceding year.

The proposed rule change would amend Rule 3020 to permit staff of NASD Regulation, Inc., ("NASD Regulation") to adjust the fidelity bond requirements to reflect changes in a member's business. Requests for exemption would be considered under recently adopted Procedures for Exemption in the 9600 Series of Rules in the Code of Procedure. Under the procedures, NASD Regulation staff issues written determinations that are subject to review by the National Adjudicatory Council.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act,[6] which provides, among other things, that the rules of a national securities association be designed to protect investors and the public interest.[7] The Commission believes that the proposed rule change will allow members to be relieved from maintaining unnecessarily high fidelity bond coverage without compromising investor protection.

The rule change applies a "good cause" standard that will require a member to demonstrate that a modification from the bonding requirement is justified by the level of loss exposure that may be expected from the member. The premiums are changed from time to time to reflect changes in loss experience and to ensure that sufficient funds are available to pay any losses reported to the insurer. NASD Regulation represents that it will apply this authority only where it is clear that an exemption will not have any unintended impact on the insurance pool, and the modified coverage will adequately protect the member against potential losses. In addition, the proposed rule change will permit NASD Regulation staff to include conditions in an exemption to ensure that any subsequent increase in capital requirements is accompanied by a corresponding increase in coverage.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–98–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19443 Filed 7–21–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] Amendment 1 revised the last sentence of proposed new paragraph (c)(4) of Rule 3020. *See* Letter from Elliott R. Curzon, Assistant Chief Counsel, NASD Regulation, to Lisa Henderson, Attorney, SEC, dated May 27, 1998.

[4] Securities Exchange Act Release No. 40065 (June 3, 1998), 63 FR 31819.

[5] 17 CFR 240.15c–1 (1997).

[6] 15 U.S.C. 78f(b)(6).

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40205; File No. SR–OCC–97–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding Initial and Minimum Net Capital Requirements for Futures Commission Merchants

July 15, 1998.

On July 15, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on February 19, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends OCC's initial and ongoing minimum net capital requirements and early warning notice provisions to establish additional requirements for clearing members that are also registered futures commission merchants ("FCMs"). Currently, OCC's rules require its members to satisfy initial and ongoing minimum net capital requirements of $1,000,000 and $750,000, respectively.[3] Under the proposed rule change, the initial and ongoing minimum net capital of OCC members that are also FCMs must exceed the greater of the following standards: OCC's current initial and ongoing minimum net capital requirements or that required by the clearing organization of the FCM member's designated self-regulatory organization ("DSRO").[4]

The proposed rule change also modifies OCC's early warning notice provisions to require OCC members that are also FCMs to notify OCC if that member's net capital falls below OCC's requirements or if its net capital falls below the minimum net capital required by the clearing organization of the FCM member's DSRO.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39648 (February 11, 1998), 63 FR 8509.

[3] OCC Rules 301 and 302.

[4] Robert C. Rubenstein from OCC in a letter dated September 3, 1997, to the Commission stated that according to OCC, the terms clearing organization and SRO shall have the meanings ascribed to them in the General Regulation of the Commodity Exchange Act, 17 CFR 1.3(d) and 17 CFR.1.3(ff) (1) and (2).

II Discussion

Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with OCC's obligations under the Act because the proposed rule change increases the effectiveness of OCC's financial surveillance of its clearing members in situations where the clearing member's net capital falls below that level required by its futures clearing organization.

Many of OCC's clearing members are also registered as FCMs under the Commodity Exchange Act and as such are subject to the financial reporting requirements and the early warning notice requirements of the Commodity Futures Trading Commission and of commodity DSROs. Because of differences in the initial and ongoing minimum net capital requirements used by the commodity regulatory organizations and those used by the securities regulatory organizations, a clearing member could fail to meet the net capital requirements of its DSRO and still satisfy the net capital requirements established by OCC. Consequently, a situation could occur where an FCM clearing member is required to give early warning notice to its commodity regulatory authority but nothing currently would require the clearing member to give notice to OCC. As a result, OCC could continue to clear trades without notice for a clearing member that may or may not be able to satisfy its financial obligations.

Therefore, requiring a clearing member to satisfy the higher applicable net capital standard and to provide OCC with early warning notices when it fails to meet the net capital requirements set by its DSRO or by OCC should assist OCC in assessing the ongoing creditworthiness of its clearing members and also should help OCC to safeguard securities and funds in OCC's custody or control.

III Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–12) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19437 Filed 7–21–98; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40209; File No. SR–OCC–97–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Adjustments to Exercise Prices

July 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 1997, the Options Clearing Corporation ("CCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–97–13) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's by-laws regarding the adjustment of exercise prices. Specifically, adjustment of exercise prices will be rounded to the next nearest trading increment as specified by the primary market for the underlying security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend Article VI, Section 11(i) of its by-laws to provide for the rounding of adjustments of exercise prices to the nearest "trading increment" for the underlying security, as fixed by the primary market for the security.[3] Currently, OCC rounds adjustments to exercise prices to the nearest eighth of a dollar. The securities industry has moved from quoting prices in eights of a dollar ("eighths") to sixteenths of a dollar ("sixteenths") and is moving towards quoting prices in decimals. Therefore, OCC believes that the adjustment provisions of its by-laws require amendment. Amending its by-laws to provide for rounding to the nearest trading increment will accommodate the interim change to pricing in sixteenths and any final change to decimal pricing.

The proposed rule change also will add a new interpretation .09 to Article VI, Section 11 expressly authorizing OCC's securities committee to adjust exercise prices of outstanding options to a new trading increment (*e.g.,* decimals) to correspond to a change in the trading increment in the underlying security in its primary market. The rule change will not mandate such adjustments, but it will give clear authority to the committee to adjust exercise prices if the committee deems such action to be appropriate in light of the factors cited in Article VI, Section 11(b) of OCC's by-laws.

Currently, exercise prices of newly introduced options series are expressed in half dollar increments. However, there generally will be options series outstanding with exercise prices expressed in eighths or sixteenths as a result of previous adjustments. Eighths cannot be converted to fewer than three decimal places and sixteenths cannot be converted to fewer than four without rounding. As a result, the rule change will provide for rounding adjusted exercise prices to the nearest unit of the applicable trading increment or, where an exercise price is equidistant between two units, to the next lowest unit. Rounding would result in a small gain ($0.25 per contract in the case of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] The complete text of the amendments was submitted with OCC's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through OCC.

sixteenths and $0.50 per contract in the case of eighths assuming a trading increment of one cent) for one side of each adjusted contract and a corresponding loss for the other. However, OCC believes that the committee will not use its adjustment authority unless it determines that the benefits of adjusting outweigh the detriments. If approved, the proposed rule change will be disclosed in a supplement to the options disclosure document.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] because it should promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organizations's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because it should ensure that the exercise price of an option on a security can be expressed in the same increment as the price of the underlying security when the pricing increment of an underlying security has been changed after the issuance of the option. As a result, the proposed rule change should increase the accuracy of the clearance and settlement of options transactions and promote the prompt and accurate clearance and settlement of securities transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should immediately reduce the possibility of inaccurate clearance and settlement of options transactions where the exercise price of the option is expressed in a different increment than the trading increment of the underlying security.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 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 in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–97–13 and should be submitted by August 12, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–OCC–97–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19442 Filed 7–21–98; 8:45 am]

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[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40199; File No. SR–PCX–97–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Minimum Trading Increments

July 14, 1998.

Pursuant to Section 19(b)(1) of Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its Rule 5.3(b) by adding a new Commentary .02 to permit members to trade on the Exchange in increments smaller than 1/16, in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System ("ITS") trade-throughs. The text of the proposed rule change is available at the Office of the Secretary, the PCX, 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

In May 1997, the Commission approved an Exchange proposal to amend its rules to permit trading of stocks in sixteenths when the selling price is $5 or above.[3] Previously such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 38575 (May 5, 1997), 62 FR 26606 (May 14, 1997) (order granting temporary accelerated approval of File No. SR–PCX–97–16); *see also* Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (order approving File No. SR–PCX–97–15, amending Rule 5.3(b)).

stocks could only be traded in ⅛ increments.

Since that time, certain third market makers have disseminated quotations in certain listed securities in fractions smaller than a sixteenth. In addition, ITS has been modified to permit ITS commitments to trade to be sent through ITS in fractions as small as 1/64. This ITS modification permits PCX members to send orders via ITS to a market displaying a quotation in 1/32 or 1/64.

The Exchange believes that it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than 1/16 for the purpose of matching a displayed bid or offer in another market at such smaller increment(*i.e.*, 1/32 or 1/64) for the purpose of preventing ITS trade-throughs. For example, if the best bid on the Exchange is 8 and a bid of 8 1/32 is displayed through ITS in another market center, the Exchange specialist or floor broker may execute a market or marketable limit order at 8 1/32 in order to match the other market's bid. Limit orders entered on the Exchange, however, will continue to be priced at the current minimum trading increment of 1/16, and orders priced in smaller increments will not be accepted.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[7]

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations ("SROs"). Last year, the PCX, American Stock Exchange ("Amex"), Nasdaq Stock Market ("Nasdaq"), New York Stock Exchange ("NYSE") and Chicago Board Options Exchange ("CBOE") reduced their minimum trading increments.[8] Currently, exchange rules provide for trading of most equity securities in increments as small as 1/16 of a dollar.[9] PCX represents that several third market makers have begun quoting securities in increments smaller than those approved for trading on the primary markets. The proposed rule change will provide PCX with the limited flexibility it needs to address this development and remain competitive with these markets.

The size of the minimum trading increment for securities traded through the facilities of Nasdaq is determined by the technical limitations of the Nasdaq system. Currently, Nasdaq systems are capable of trading securities priced under $10 in increments as fine as 1/32 of one dollar. Securities priced over $10 may be traded in increments as fine as 1/16 of one dollar.[10] As a result, the Commission recognizes that Nasdaq third market makers may trade exchange listed securities priced at less than $10 in increments finer than sixteenths. Nasdaq has informed the Commission that Nasdaq third market makers are currently posting quotes for listed securities in increments finer than sixteenths.[11] The proposed amendment to Exchange Rule 5.3(b) will allow PCX traders to match prices disseminated by Nasdaq market makers that may better the PCX quote by an increment finer than the current 1/16 minimum increment. In addition, the Commission notes that the proposal will enable the Exchange to match prices disseminated by another exchange in the event that another exchange were to reduce its minimum trading increment.[12] The proposal should assist Exchange members to fulfill their obligation to obtain the best price for their customers. Accordingly, the Commission believes that it is reasonable for the Exchange to allow trading in increments finer than sixteenths for the limited purpose of preventing an ITS trade-through.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will provide PCX members with the ability to match a better bid or offer made available through ITS, thereby helping to prevent ITS trade-throughs and ensuring the best execution of PCX customer orders. The Commission notes that this proposal is similar to a proposal by the NYSE that was published for the full notice and comment period, no comments were made on that proposal.[13] Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] *See* Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (order approving PCX–97–15, amending PCX Rule 5.3(b)); Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to 1/16 for certain Amex-listed equity securities); Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to 1/16 for certain Nasdaq-listed securities); Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to 1/16 for certain NYSE-listed securities); and Exchange Act Release No. 39159 (Sept. 30, 1997), 62 FR 52365 (Oct. 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to 1/16 for stocks).

[9] *Id.*

[10] The Commission notes that any change to the minimum increment for securities traded through the facilities of the Nasdaq system would be considered a change in an existing order-entry or trading system of an SRO. Accordingly, the NASD would be required to file a proposed rule change under Section 19(b)(3)(A) of the Act to change its minimum increment.

[11] Telephone conversation between Andrew S. Margolin, Senior Attorney, Nasdaq, Gene Lopez, Vice President, Trading and Market Services, Nasdaq, and David Sieradzki, Attorney, Commission, on July 8, 1998.

[12] To change its minimum increment, an exchange would be required to file a proposed rule change that would become immediately effective under Section 19(b)(3)(A) of the Act.

[13] *See* Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997). The Commission also notes that it recently approved on an accelerated basis a similar proposal by Amex. *See* Exchange Act Release No. 40189 (July 9, 1998) (order approving File No. SR–Amex–97–39).

[14] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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 susequent 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, located at the above address. 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–PCX–97–46 and should be submitted by August 12, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)of the Act,[15] that the proposed rule change (SR–PCX–97–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19438 Filed 7–21–98; 8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40193; File No. SR–PCX–98–21]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Fines for Disruptive Action on the Options Floor

July 10, 1998.

I. Introduction

On April 16, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to increase fines for disruptive action involving physical contact between members while on the options floor. Notice of the filing was published in the Federal Register on June 10, 1998.[3] No comments were received. This order approves the proposal.

II. Description of the Proposal

The Exchange is proposing to increase its recommended fines under the Minor Rule Plan ("MRP")[4] for disruptive action involving physical contact between members while on the options floor.These fines are currently set at $500, $1,000 and $2,500 for first, second and third violations, respectively, during a running two-year period. The Exchange is proposing to increase these fines to $1,500, $3,000 and $5,000, respectively.[5] The purpose of the rule change is to deter future incidents of disruptive conduct involving physical contact on the PCX options floor. The Exchange notes that there has been a moderate increase recently in the number of such cases, and the Exchange intends for the proposed rule change to reverse that trend.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular with the requirements of Section 6(b)(6) of the Act.[6] Section 6(b)(6) of the Act requires that the rules of the Exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. The Commission believes that the proposed fines will serve as a stronger deterrent to disruptive behavior, thereby promoting fair and orderly markets on the options floor and protecting investors and the public interest. The Commission also notes that the proposed fine schedule is graduated to account for repeat offenders and that the Exchange may commence a formal disciplinary proceeding under Exchange Rule 10.3 if it determines that a violation otherwise covered by the MRP is not minor is nature. Accordingly, the Commission believes that the proposed fines will result in appropriate discipline.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–98–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19444 Filed 7–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40208; File No. SR–Phlx–97–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change To Adopt a New Method of Calculating Initial and Maintenance Margin Requirements for Foreign Currency Options

July 15, 1998.

I. Introduction

On December 22, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would adopt a new method of

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[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40063 (June 3, 1998), 63 FR 31823.

[4] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph 9(c)(2) of Rule 19d–1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)–(j) sets forth the specific Exchange rules deemed to be minor in nature.

[5] As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly, any fine imposed in excess of $2,500 will be subject to reporting of SEC Form BD in addition to the immediate, rather than periodic, reporting a requirement of Section 19(d)(1) of the Act. *See* Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. ("NYSE") Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).

[6] 15 Proposed Rule Change 78f(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

calculating initial and maintenance customer margin requirements for foreign currency options under Phlx Rule 722. Under proposed new Commentary .16 to Rule 722, the Exchange would calculate the margin requirements for each foreign currency separately, rather than determining one margin level for all foreign currencies based upon the historical pricing information for all foreign currencies together. The Phlx filed Amendment No. 1 to the proposed rule change on April 6, 1998.[3]

On April 20, 1998, the proposed rule change and Amendment No. 1 were published for comment in the **Federal Register**.[4] No comments were received on the proposal. On June 1, 1998, the Phlx filed Amendment No. 2 to the proposed rule change.[5] This order approves the amended proposed rule change including Amendment No. 2 to the proposed rule change on an accelerated basis.

III. Description of the Proposal

Currently, the Exchange calculates the margin requirement for customers that assume short foreign currency option positions by adding 4% of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract.[6] The 4% add-on percentage was adopted in 1986 and provided for initial margin which would cover the aggregate underlying foreign currencies' historical volatility over a seven day period with a 95% confidence level over the latest nine month period.[7] Thus, the margin level for foreign currency options has been set based on the historical pricing information for all foreign currencies considered together. This add-on percentage is now reviewed by the Exchange every quarter to assure that it provides for a 97.5% confidence level over a five day period.

In response to the Commission's recommendation that the Exchange should set margin levels for each foreign currency option independently and specify its procedure for setting these levels in its rules, the Phlx is proposing to determine the applicable add-on percentage by reviewing, on a quarterly calendar basis,[8] five-day price changes over the preceding three-year period for each underlying currency and set the add-on percentage at a level which would have covered those price changes at least 97.5% of the time ("confidence level"). Pursuant to the proposal, if the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange will increase the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level will remain the same but will be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months.[9] If during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level will be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency will be taken off monthly reviews and will be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level will be reduced to a 98% confidence level during the most recent 3 year period. Finally, in order to account for large price movements outside the established margin level, if the quarterly review shows that the currency had a price movement, either positive or negative, greater than two times the margin level during the most recent 3 year period, the margin requirement would be set at a level to meet a 99% confidence level ("Extreme Outlier Test").

The quarterly reviews will be conducted promptly following the 15th of January, April, July and October of each year. In addition to the routine reviews described above, the Exchange continues to have authority to impose a higher margin level at any time in between reviews if market conditions so warrant.[10] At this time, the margin levels for Tier, I, II, and III customized cross rate options will remain the same.

Finally, the Phlx proposes to revise Rule 722 so that while the calculation methodology will be outlined in Commentary .16, the actual margin level for each currency will not be stated. Instead, the Exchange will distribute circulars to the membership announcing the margin levels that are derived pursuant to the methodology in Commentary .16 to Rule 722. The Exchange also will inform its membership and the pubic via memoranda and circulars of the margin levels for each foreign currency option immediately following the quarterly reviews described in proposed Commentary .16 of Rule 722.[11] In addition, any time that a particular margin level changes based on a review or otherwise pursuant to Rule 722, the new margin requirement will be announced via circular to the membership.[12]

III. Discussion

The Commission finds that the proposed rule change, as amended,

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[3] *See* Amendment No. 1 to Phlx 97–63 and cover letter from Nandita Yagnik, Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 3, 1998 ("Amendment No. 1"). Amendment No. 1 incorporates the original proposed rule change and amendments to the original proposal into a Rule 19b–4 notice. In Amendment No. 1, the Phlx proposes to amend its original proposal to: (1) conduct margin reviews quarterly rather then semi-annually; (2) monitor currencies monthly when the confidence level falls to between 97% and 97.5% until the confidence level exceeds 97.5% for two consecutive months; and (3) revise Rule 722 to exclude the actual margin level for each currency and instead, to distribute membership circulars announcing the margin levels that are derived pursuant to proposed Commentary .16 of Rule 722. Amendment No. 1 also incorporates changes originally proposed in a letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated February 19, 1998.

[4] *See* Securities Exchange Act Release No. 39856 (April 13, 1998) 63 FR 19554.

[5] *See* Letter from Nandita Yagnik, Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated May 29, 1998 ("Amendment No. 2"), In Amendment No. 2, the Phlx represents that it will inform its membership and the public via memoranda and circulars of the margin levels for each currency option immediately following the quarterly reviews described in proposed Commentary .16 to Rule 722.

[6] This 4% "add-on" percentage is applicable to the following foreign currencies: Australian dollar, British pound, Canadian dollar, German mark, European Currency Unit, French franc, Japanese yen and Swiss franc. The Spanish peseta and the Italian lira currently have a 7% add-on percentage and the Mexican peso has an add-on percentage of 17%.

[7] *See* Securities Exchange Act Release No. 22469 (September 26, 1985) 50 FR 40663 (October 4, 1985) (order approving File Nos. SR–Amex–84–29, SR–CBOE–84–27, SR–NASD–85–15, SR–PSE–84–20, SR–Phlx–84–32 and SR–Phlx–85–18 and establishing a uniform margin system for options products).

[8] Although the Phlx initially proposed semi-annual margin reviews, in Amendment No. 1, the Phlx proposes to amend Commentary .16(b) of Rule 722 to require martin reviews to be conducted quarterly, promptly following the 15th of January, April, July and October of each year *See* Amendment No. 1, *supra* note 4.

[9] As initially proposed, it was unclear whether monthly margin reviews would be required once the confidence level equaled 97.5%. Amendment No. 1 makes clear that the confidence level must exceed 97.5% for two consecutive months before the currency will no longer be reviewed monthly. *See* Amendment No. 1, *supra* note 4.

[10] *See* Phlx Rule 722(i)(8).

[11] *See* Amendment No. 2, *supra* note 6.

[12] As initially proposed, all changes to the add-on percentage for individual currencies set forth in Phlx Rule 722 would have required a proposed rule change to be filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. Because the actual margin levels will not be set forth in Phlx Rule 722 pursuant to Amendment No. 1 such changes will not trigger a requirement to submit a Section 19(b)(3)(A) filing to the Commission. Instead, changes to the margin levels as a result of the new calculation methodology will be announced to the Phlx membership via circular, as discussed above. Telephone conversation between Nandita Yagnik, Counsel, Phlx, and Deborah Flynn, Division, Commission, on April 13, 1998.

relating to the calculation of customer margin requirements for foreign currency options is consistent with the requirements of Section 6 of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [15] in that the amendment and codification of the methodology used to calculate initial and maintenance customer margin requirements for foreign currency options should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

The Commission believes that the Exchange's proposed methodology for determining customer margin requirements for each foreign currency independently, rather than determining one margin level from the combined historical volatilities of all underlying foreign currencies together, is reasonable and should adequately account for the historical and potential volatility of each of the traded foreign currencies. By setting margin levels for each foreign currency option separately, the Commission believes that the margin requirements established pursuant to this approach will better reflect the specific risks associated with each individual foreign currency option.

As discussed above, the Exchange will calculate the applicable add-on percentage by reviewing, on a quarterly basis, five-day price changes over the preceding three-year period for each underlying currency and will set the add-on percentage at a level sufficient to cover those price changes at least 97.5% of the time. The Commission believes that this methodology should allow the Phlx to reasonably determine an appropriate add-on percentage for each individual currency. In addition, the Exchange must conduct reviews at least quarterly of the volatility of each foreign currency and must take immediate steps to increase the existing customer margin requirements if the existing margin levels are deemed to be inadequate. The Extreme Outlier Test will also ensure adequate margin by monitoring for large currency price movements that are outside the normal range. As discussed above, the Extreme Outlier Test would require margin confidence levels to be increased to 99% if the underlying currency has had a price movement of greater than two times the margin level over the last 3 years. Moreover, the Commission notes that the Exchange continues to have authority to conduct reviews of foreign currency margin levels at any time that market conditions warrant. The Commission fully expects the Exchange to exercise this authority to review the adequacy of existing foreign currency margin levels during times of significant volatility in the foreign currency markets, in addition to the routine quarterly reviews. The new margin methodology, coupled with the Extreme Outlier Test, routine quarterly and as-needed reviews, has been designed to reduce risks arising from inadequate margin levels for foreign currency options and should help to ensure adequate margin is required to cover contract obligations. Accordingly, the Commission believes that consistent with Section 6(b)(5) of the Act,[16] the Phlx's proposal will serve to protect investors and the public interest by reducing the risks that can arise from inadequate margin levels.

The Commission notes that the calculation methodology, rather than the actual margin level for each currency, will be set forth in Commentary .16 to Rule 722. Instead, the Phlx proposes to distribute circulars to its membership periodically to announce the margin levels derived pursuant to the proposed methodology. As discussed above, the Phlx proposes to distribute circulars to its membership announcing the margin levels derived pursuant to Commentary .16 of Rule 722, immediately following is quarterly reviews of the applicable add-on percentages, and at any time that a particular margin level changes. The Commission believes that providing information about margin requirements initially, on a quarterly basis, and whenever there is a change in a margin level should ensure that Exchange members and others with a interest in trading foreign currency options listed on the Phlx are provided with adequate notice of the applicable margin requirements.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** The Commission notes that Amendment No. 2 merely increases the frequency of distribution of circulars informing the Exchange's membership of the margin levels for each foreign currency option. As discussed above, the Commission believes that issuing circulars immediately following the proposed quarterly reviews of margin levels strengthens the Phlx's proposal by ensuring interested Exchange members and other market participants receive adequate notice of the applicable add-on percentages. For these reasons, the Commission believes that the proposed Amendment No. 2 raises no issues of regulatory concern. Accordingly, the Commission finds that good cause exists, consistent with Sections 19(b) and 6(b)(5) of the Act,[17] to accelerate approval of Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–63 and should be submitted by August 12, 1998.

Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal, as amended, to change Phlx's method of calculating initial and maintenance margin requirements for foreign currency options under Rule 722 is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–97–63), as amended, is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[19]

[13] 15 U.S.C. 78f.

[14] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b) and 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–19439 Filed 7–21–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3106]

State of Alaska

The Native Village of Port Graham and the surrounding areas in the Kenai Peninsula Borough in the State of Alaska constitute a disaster area as a result of damages caused by a fire that occurred on January 13, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 14, 1998 and for economic injury until the close of business on April 14, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 310605 for physical damage and 993700 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–19491 Filed 7–21–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3104]

State of Florida

As a result of the President's major disaster declaration on June 18, 1998 for emergency assistance only, and an amendment thereto on July 3, 1998, as well as subsequent amendments adding Individual assistance, I find that the following counties in the State of Florida constitute a disaster area due to damages caused by extreme fire hazards beginning on May 25, 1998 and continuing: Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Clay, Citrus, Columbia, Dixie, Duval, Flagler, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Lafayette, Lake, Lee, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Osceola, Pasco, Putnam, St. Johns, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Walton, and Washington. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 1, 1998, and for loans for economic injury until the close of business on April 5, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Charlotte, Collier, Franklin, Gadsden, Glades, Hendry, Highlands, Hillsborough, Indian River, Jefferson, Leon, Okeechobee, Pinellas, Polk, Santa Rosa, and Wakulla Counties in Florida; Brooks, Camden, Charlton, Clinch, Decatur, Echols, Lowndes, Seminole, and Ware Counties in Georgia; and Covington, Escambia, Geneva, and Houston Counties in Alabama.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 310405. For economic injury the numbers are 993100 for Florida; 993800 for Georgia; and 993900 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–19489 Filed 7–21–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9936]

State of Florida

Broward, Charlotte, Hillsborough, Pinellas, Sarasota, and St. Lucie Counties and the contiguous counties of Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highland, Indian River, Lee, Manatee, Martin, Okeechobee, Palm Beach, Pasco, and Polk in the State of Florida constitute an economic injury disaster loan area as a result of wildfires beginning on May 25, 1998. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 14, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–19492 Filed 7–21–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3105]

State of New York

As a result of the President's major disaster declaration on July 7, 1998, and an amendment thereto on July 10, I find that Cattaraugus, Clinton, Erie, Essex, and Wyoming Counties in the State of New York constitute a disaster area due to damages caused by severe storms and flooding beginning on June 25, 1998 and continuing through July 10, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 5, 1998, and for loans for economic injury until the close of

business on April 7, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allegany, Chautauqua, Franklin, Genesee, Hamilton, Livingston, Niagara, and Warren Counties in New York, and McKean and Warren Counties in Pennsylvania.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 310211 for physical damage and 992600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–19490 Filed 7–21–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1998–4081]

Chemical Transportation Advisory Committee, Subcommittee on Proper Cargo Names

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee's (CTAC) Subcommittee on Proper Cargo names (PCN) will meet to discuss various issues relating to use of proper cargo names for the marine transportation of hazardous materials in bulk. the meeting will be open to the public.

DATES: The PCN Subcommittee will meet on Thursday, July 30, 1998, from 9 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the U.S. Coast Guard on or before July 24, 1998. Requests to have a copy of your material distributed to each member of the CTAC Subcommittee should reach the U.S. Coast Guard on or before July 24, 1998.

ADDRESSES: The Subcommittee will meet at the American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060–6008. Point of contact: Mr. Philip G. Rynn; tel.: 281–877–6415; fax.: 281–877–6795. Send written material and requests to make oral presentations to Mr. Curtis Payne, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Curtis Payne, telephone 202–267–1577, fax 202–267–4570. For questions on viewing, or submitting material to, the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Meeting Agenda

Subcommittee on Proper Cargo Names (PCN). Two Working Groups, the "Facilities and Shippers Working Group" and the "Vessels Working Group" will continue the agenda of the previous meeting that includes the following:

(1) Discussion of the industry's cargo naming/identification processes;

(2) Root cause analysis of proper cargo name selection; and

(3) Prepare draft plan of action.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Payne no later than July 24, 1998. Written material for distribution at the meeting should reach the U.S. Coast Guard no later than July 24, 1998. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to Mr. Payne no later than July 24, 1998 or make other arrangements with Mr. Payne.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Payne as soon as possible.

Dated: July 14, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–19422 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 97–02–U–00–ALW To Use the Revenue From a Passenger Facility Charge (PFC) at Walla Walla Regional Airport, Submitted by the Port of Walla Walla, Walla Walla Regional Airport, Walla Walla, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use only PFC revenue at Walla Walla Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 21, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, S.W., Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry G. Adams, Airport Manager, at the following address: Port of Walla Walla, 310 A Street, Walla Walla, WA 99362.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Walla Walla Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, (425) 227–2660; Seattle Airports District Office; SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue, S.W., Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application 97–02–U–00–ALW to use only PFC revenue at Walla Walla Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 14, 1998, the FAA determined that the application to use only the revenue from a PFC submitted by Port of Walla Walla, Walla Regional Airport, Walla Walla, Washington, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: November 1, 2014

Total requested for use approval: $1,187,280

Brief description of proposed project: 31,000 square foot passenger terminal building with all associated infrastructure.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walla Walla Regional Airport.

Issued in Renton, Washington on July 14, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–19419 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2, Notice. No. 7]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final order of particular applicability.

SUMMARY: FRA issues an order of particular applicability (order) applying to certain trains operating on the track controlled by the National Railroad Passenger Corporation (Amtrak) on the Northeast Corridor (NEC) between Washington, DC, and Boston, Massachusetts. The order requires all trains operating between New Haven, Connecticut and Boston (NEC-North End) to be controlled by locomotives equipped to respond to a new advanced civil speed enforcement system (ACSES) in addition to the automatic train control (ATC) system currently required on the NEC. On the NEC between Washington, DC and New York, New York (NEC-South End), where access to the high-speed track is prevented by switches locked in the normal position and a parallel route to the high-speed track is provided at crossovers from adjacent tracks, and where no junctions providing direct access exist, ACSES-equipped trains may operate to a maximum speed not to exceed 135 miles per hour (mph). This order also contains performance standards for the cab signal/ATC and ACSES systems on the NEC, and authorizes increases in certain maximum authorized train speeds and safety requirements supporting improved rail service.

DATES: This order becomes effective on August 21, 1998.

FOR FURTHER INFORMATION CONTACT: W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, SW, Washington, DC, 20590 ((202) 632–3353), Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, SW, Washington, DC, 20590 ((202) 632–3354), or Patricia V. Sun, Office of Chief Counsel, FRA, 400 Seventh Street, SW, Washington, DC 20590 ((202) 632–3183).

SUPPLEMENTARY INFORMATION:

Statutory Authority

FRA has both discrete and plenary legal authority to require all trains operating on the NEC to be equipped with automatic train control devices. FRA has broad legal authority to "prescribe regulations, and issue orders for every area of railroad safety * * *" 49 U.S.C. 20103. Section 20502 of Title 49, United States Code specifically provides that "[w]hen the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install * * * a signal system that complies with the requirements of the Secretary." As originally enacted and prior to formal codification, this provision referred to "automatic train stop, train control, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation * * *." This authority has been previously invoked to require the installation of signal systems on 49 specific railroads and to require all railroads desiring to operate at high speeds to install signal systems of varying degrees of sophistication consonant with those higher speeds.

Proceedings to Date

On November 20, 1997, FRA published a Proposed Order of Particular Applicability (proposed order) that would require all trains operating on the NEC-North End to be controlled by locomotives equipped to respond to a new advanced civil speed enforcement system in addition to the automatic train control system currently required on the NEC (62 FR 62097).

The proposed order called for written comments to be received by January 20, 1998, and requests for a public hearing to be received by December 22, 1997. On February 17, 1998, FRA held a public hearing at the request of several commentators.

Background--Development of the NEC

Amtrak provides service over the NEC from Washington, DC, to Boston, Massachusetts. Amtrak owns or dispatches most of the NEC, which it shares with several commuter authorities and freight railroads. Current speeds on the NEC-North End range up to 110 mph.

Amtrak is currently undertaking a major improvement project on the NEC, with particular emphasis on completion of electrification, installation of concrete ties and high-speed turnouts, elimination of some remaining highway-rail crossings, and other modifications concentrated between New Haven and Boston. These improvements are designed to facilitate service utilizing high-speed trains (HSTs) at speeds up to 150 mph. During 1999, Amtrak will begin taking delivery of HSTs expected to qualify for operation through curves at higher levels of unbalance (and thus higher speeds) than conventional trains.

Through this order, FRA ensures that planning for high-speed service will not occur in isolation from measures that could reasonably address increased traffic densities, and drive future innovative technology.

Regulatory Approvals Required

In general, new signal and train control systems must comply with FRA's Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances (49 CFR Part 236). FRA will implement any exceptions on a case-by-case basis through the waiver process as provided by 49 CFR Part 235. Train operations in excess of 110 mph must be authorized by FRA after examination of pertinent safety considerations in accordance with 49 CFR 213.9(c) (operating speed limits). Metroliner service on the NEC is already conducted in accordance with such an authorization.

In addition, NEC operations are subject to special requirements of the Rail Safety Improvement Act of 1988, which mandated that all NEC trains be equipped with "automatic train control systems designed to slow or stop a train in response to external signals." Sec. 9, Pub. L. No. 100–342, implemented at 52 FR 44510 (Nov. 19, 1987), 53 FR 1433 (Jan. 19, 1988), and 53 FR 39834 (Oct. 12, 1988).

Summary of the Proposed Order

The proposed order would implement ACSES on the NEC-North End by October 1, 1999, allowing Amtrak to increase its maximum operating speed on this segment of the NEC from 105 mph to 150 mph. In addition to Amtrak, the Connecticut Department of Transportation (ConnDOT), Consolidated Rail Corporation (Conrail), the Massachusetts Bay Transportation Authority (MBTA), and the Providence and Worcester Railroad Company (P&W), which also operate on this territory, would be required to equip their locomotives and cab cars with ACSES. (On July 23, 1998, the Surface Transportation Board is expected to approve the division of Conrail between the Norfolk Southern Corporation (NS) and the CSX Corporation (CSX); NS and CSX have yet to announce a date for this division. NS and CSX, as successors to Conrail, will be subject to this order to the extent that they operate on this segment of the NEC.)

FRA initially discussed the features and functions of ACSES with the Northeast Corridor Safety Committee in September of 1994, and Amtrak continued to brief the affected railroads as system development proceeded. ACSES would enforce permanent speed restrictions caused by curves, bridges and other factors, positive stops at interlocking home signals and control points, work limits, and temporary slow orders, through transponders similar to those used by European railroads. Transponders are devices containing encoded information on such factors as location and distance to the beginning of a speed restriction, type of speed restriction, target speed, average grade, distance to the next transponder, and message verification information. Transponders would be installed at all approaches to interlockings within high speed territory, including those where trains could mistakenly pass an interlocking signal and encroach onto high speed track, as part of a train control system which would be independent of the on-board cab signal/automatic train control system, but would interface with it to provide displays to train crews on factors such as civil speed restrictions, trains located ahead, and interlocking conditions. A data radio network would be used to download temporary movement restrictions, among other functions.

Equipped rail vehicles would continuously transmit a signal which, when received by a transponder, would cause the transponder to transmit back its encoded message. Those messages, including speed and braking conditions, would be received in the train's cab, interpreted by an on-board computer, and passed along to the train's engineer for appropriate action. If necessary, automatic braking would take place.

Amtrak would also expand its existing 4-aspect cab signal system, which provides for "restricted speed", 30 mph, 45 mph, and the maximum authorized speed for the equipment on which it is installed, to a 9-aspect system, which provides for additional aspects of 60 mph, 80 mph, 100 mph, 125 mph, and 150 mph. The current 4-aspect system employs a 100 Hz carrier frequency coded at the rates of 75, 120, and 180 pulses per minute; the 9-aspect system would employ an additional carrier frequency of 250 Hz, and an additional code rate of 270 pulses per minute. Amtrak developed this 9-aspect system to provide four independent functions: (1) Operation of high-speed trainsets at a new maximum speed of 150 mph; (2) higher speed diverging signal aspects, upgrading the previous 45 mph diverging aspect; (3) an enforced 30 mph diverging aspect; and (4) closer headways by adding three enforced speeds between the existing 45 mph and 125 mph enforced speeds.

On the NEC-South End, the proposed order would require ACSES wherever speeds exceeded 125 mph (the current maximum speed), with only high speed trains equipped where crossovers could be locked to avoid incursion. The proposed order contemplated, but did not require, implementation of ACSES by all NEC users (except possibly the Metro-North Commuter Railroad Company), including Amtrak, commuter railroads, and freight carriers. To minimize the impact on users, ACSES would be implemented incrementally as funding became available, so that operational benefits could begin immediately as each portion of line and each vehicle became equipped.

Summary of Modifications to the Proposed Order

In response to comments and technical changes in the proposed order FRA has made modifications in this final order, the more significant of which are highlighted below. The proposed order stated that comments received after the close of the comment period would be considered to the extent possible. Amtrak has continued to refine and adapt its design specifications, as proposed in Amtrak's February 17, 1998 supplemental comments, May 8, 1998 letter (copies of both are in the docket), and subsequent conversations with FRA (memorializations of which are also in the docket). This order contains modifications responsive to Amtrak's proposed design specification changes, which are discussed below. A detailed analysis of the comments appears elsewhere in this order.

Major Modifications

(1) Use of Temporary Transponders in Lieu of Loading Temporary Restrictions

Under ACSES, temporary restrictions flow directly from the computer assisted dispatch center into the data radio channel and thus into the on-board computer, virtually eliminating errors in transmission or recordation and

ensuring that information is acted upon. Were train crew members to enter this data, they could make errors and then be tempted to rely on the "system" to provide the required speed reductions on the cab display in lieu of relying on a paper copy.

In a letter dated May 8, 1998, Amtrak requested permission to use temporary transponders (placed in the gage of the rail) as an alternative to inputting temporary restrictions by direct data radio link into the on-board computer. Typically, Amtrak would place these at locations approaching work zones and other slow order zones. Although FRA considers temporary transponder placement acceptable for last minute slow orders in emergencies where reliable communication to the en route train cannot be assured, FRA believes the better practice is to require temporary restrictions to be automatically loaded into the on-board computer. FRA will allow Amtrak to use temporary transponders as an alternative routinely for the first 12 months after implementation of this order in order to ease transition to this new system. After this period, temporary transponders may be deployed only on an emergency basis unless they are being used as an *additional* safety measure.

(2) Availability of Data Radio Release at Interlockings

FRA proposed to require, and Amtrak expects to provide, a capability that would automatically permit movement of a train past an interlocking signal displaying a stop and proceed or restricting aspect without the necessity of the engineer leaving his or her normal position in the cab to press a release button. To ensure that this capability is in place and fully operational, FRA requires data radio transmitters to be located at interlockings and interfaced with interlocking controllers not less than 12 months following activation (cut in) of ACSES.

Elimination of recurring acknowledgment. Amtrak's original plan included a recurring 15 second audible alarm and a 20 second acknowledgment while operating at restricted speed. In a May 8, 1998 letter, Amtrak proposed to modify this ATC feature, disliked by many locomotive engineers. The modified feature would sound a warning immediately and require acknowledgment within 5 seconds whenever initial movement is detected while the cab signal displays "restricting," in order to prevent a penalty brake application. (FRA assumes that the one-time acknowledgment would be required on downgrade to restricting as well.) Through the use of data radio at the interlockings, this feature would automatically permit movement of a train past an interlocking signal displaying a stop and proceed or restricting aspect without the necessity of the engineer leaving his or her normal position in the cab to press a release button. FRA has agreed to this proposed feature, which Amtrak suggests would be particularly useful when a train is starting from a stop at a station close to an interlocking home signal.

(3) Speeds Over Highway-Rail Crossings

In the proposed order, FRA suggested a speed limit over any highway-rail crossing of 80 mph, for the following reasons:

> Speeds over highway-rail crossings will be limited to 80 mph, the maximum speed planned under the NEC program until very recently. This limit is lower than the 110 mph cap included in current guidelines for high-speed corridors (absent barrier and presence detection systems tied into the signal system), because of the density of NEC operations and the increased possibility that a collision with a motor vehicle might cause a secondary collision between trains operating at very high combined closing speeds. FRA reserves the right to allow higher speeds over individual highway-rail crossings after demonstration by Amtrak that appropriate safety measures have been implemented.

Dense operations on the NEC-North End present special safety concerns, particularly since both intercity and commuter trains will be operating with improved acceleration as electric locomotives and HSTs are deployed—driving up average speeds. This is a two-track railroad throughout its length, with 13 crossings between New Haven and Boston. Although the crossings in question are generally low-volume, most are subject to the movement of large vehicles such as flatbed trucks carrying boats, garbage trucks, fire trucks, and other substantial vehicles known to be capable of derailing a train. The likelihood of a derailment may increase to some extent, even in the case of collision with a relatively light vehicle, if the crossing in question is on a curve and Amtrak is successful in qualifying its HSTs for levels of unbalance up to 9 inches, as provided in a previously issued waiver.

Therefore, in this order, FRA sets a maximum operating speed of 80 mph over any highway-rail crossing where only conventional warning systems are in place, and a maximum operating speed of 95 mph where 4-quadrant gates and presence detection are provided and tied into the signal system. FRA also requires Amtrak to submit for approval plans for site-specific improvements with timetables for each of the 13 crossings on the NEC-North End by January 1, 1999.

(4) Signal and Train Control Enhancements

Providing signalization for high-speed intercity service requires implementation of an enhanced cab signal/speed control system that allows for higher train speeds while providing sufficient gradations of intermediate speeds to allow efficient movement of other scheduled trains operating in the conventional speed range. Reasonable interoperability of existing and upgraded on-board equipment is also necessary to allow for the continued use of existing on-board equipment at conventional speeds only.

9-Aspect Cab Signal System. The cab signal/ATC portion of the upgraded system will employ two carrier frequencies, 100 Hz, compatible with existing equipment, and 250 Hz. Both frequencies will be coded at standard rates of 75, 120, 180, and 270 cycles per minute. Upgraded equipment will be able to take advantage of the 150 mph code rate for maximum authorized speed, the 80 mph code rate for high speed diverging moves, and separate 45/40 and 30 mph speed commands for limited and medium speed turnouts.

ACSES. In contrast to the modified cab signal system, ACSES will provide new safety functions that, with limited exceptions, are not currently provided. For purposes of civil speed control, permanent wayside transponders will be placed in sets (normally two to a set) at convenient, accessible locations in the center of the track approaching speed restriction zones. Most of these transponders will be passive devices requiring no energy source other than that transmitted from a passing train. Each permanent transponder set will contain encoded information about speed restrictions ahead, including: (i) The distance to the beginning of the speed restriction; (ii) The target speed; (iii) The type of speed restriction; (iv) The average grade between the location where the speed reduction must begin and the location where the reduced speed must be reached; (v) The distance to the next permanent transponder set location; and (vi) Necessary sync and check bytes to allow for message verification.

Improvements that Amtrak will gain with the new systems are:

- Train speeds of up to 150 mph;
- A high speed diverging aspect (80 mph);
- The efficient handling of both high speed and conventional trains;

- New intermediate speeds between 45 mph and 150 mph;
- The capability for headway improvement in congested commuter areas; and
- Practical staging from present wayside and on-board equipment.

Commuter and freight railroads will both benefit from enhanced safety of Amtrak operations, given the common operating environment, since Amtrak's implementation of the 9-aspect cab signal system will provide increased flexibility to schedule high speed intercity service in a way that does not conflict with commuter operations. In addition, as ACSES is implemented on commuter and freight trains, the safety of those operations will be enhanced by ensuring that those trains do not pass absolute stop signals or operate at excessive speed approaching stations or bridges. To the extent equipment design permits, commuter operators may take advantage of higher speeds on curves without diminished safety margins with the new flexibility for operation at higher cant deficiencies in FRA's revised Track Safety Standards (63 FR 33992; June 22, 1998).

Amtrak will phase-in installation in order to obtain the maximum benefit from the positive stop and civil speed enforcement system prior to its installation on the Amtrak-dispatched portions of the NEC. The initial installations will protect entry to and operations along the high speed territory. During this initial phase, transponders will not be installed on non-high speed tracks where flanking protection protects against possible encroachment into adjacent high speed tracks. The transponder system will be extended to the balance of the NEC after all installations are in place on high speed tracks and on adjacent tracks where flanking protection does not exist. (This description in no way pre-decides the issue of whether trains of other operators on other portions of the NEC will be required to be equipped.)

(5) Nighttime Operations

As an interim measure to allow for gradual equipping of a railroad's locomotive fleet, FRA had proposed to allow unequipped freight operations to enter the NEC-North End during low-volume night hours. After considering the comments (discussed in more detail below), FRA is not adopting this proposal for two reasons. First, train delays could cause fast trains to invade the window or unequipped trains to fail to clear the window in time. Second, Amtrak expects to conduct most production track work at night, and unequipped trains would not be prevented from entering work zones or passing work groups at excessive speed, resulting in reduced safety benefits. Instead of the proposed time window, FRA will handle any exceptions to this order through waivers or spot amendments to the order.

Proceedings on This Order

FRA sought public comment on the proposed order and related matters, including any authorization that may be required for Amtrak to implement a modified cab signal system on the NEC. FRA has placed in the docket of this proceeding copies of Amtrak's program description for the ACSES system, proposed operating rules for use in conjunction with the system, and other related information, including current Amtrak projections for operating speeds over highway-rail crossings on the NEC-North End. FRA has reviewed the comments and hearing testimony, which have been extremely helpful in resolving these issues.

The following parties testified at the February 17 hearing: The American Public Transit Association (APTA), the Brotherhood of Locomotive Engineers-American Train Dispatchers Division (BLE–ATTD), ConnDOT, Conrail, MBTA, P&W, and Southeastern Pennsylvania Transportation Authority (SEPTA).

In addition, written comments were submitted by the following: Amtrak, APTA, Brotherhood of Locomotive Engineers (BLE), ConnDOT, Conrail, Long Island Railroad (LIRR), MBTA, Metro-North Commuter Railroad Company (Metro-North), National Transportation Safety Board (NTSB or Board), P&W, Representative Patrick J. Kennedy, Senator Edward M. Kennedy, Senator Jack Reed, and SEPTA.

The following also submitted comments in support of P&W's concerns:

Arnold Lumber Co., Atlantic Wire, BB&S Treated Lumber of New England, Colfax Inc., Dominion Rebar, Fortune Plastics Inc., The Narragansett Bay Commission, Seaview Transportation Company, Inc., Ring's End, and Unilever.

While many commentators spoke or wrote on more than one issue, and while most of the comments supported the position(s) of at least one other commentator, the issues themselves were grouped around a few key points, which are discussed below.

General Issues

(1) Scope of Order

Several commentators stated that the proposed order did not define its applicability clearly. SEPTA commented that the proposed order did not specify its applicability south of New Haven, and APTA also requested additional clarification on the order's scope and applicability on the NEC-South End.

As proposed by Amtrak, implementation of the ACSES system would impact all NEC users including Amtrak, commuter railroads, and freight carriers, with the exception of the NEC segment operated by the New York Metropolitan Transportation Authority (MTA) and Metro-North. ACSES would be implemented incrementally as funding becomes available, so that operational benefits would begin immediately as each portion of line and each vehicle becomes equipped.

At this time, FRA mandates that all trains operating on the NEC-North End be equipped with operative on-board equipment that responds to ACSES, as proposed. This order also authorizes higher speeds for such equipped trains on high-speed tracks on the NEC-South End, but other trains utilizing those tracks or adjacent tracks are not required to be equipped. FRA will continue to study the reliability and safety benefits of ACSES as implementation on the NEC-North End is completed, and may later propose to require ACSES on the rest of the NEC as traffic densities increase.

ConnDOT commented that the proposed order contained errors regarding the ownership of the New Haven, Connecticut-New Rochelle, New York section of NEC track. FRA agrees that Metro-North does not own any segment of the NEC, that ConnDOT owns the track between New Haven and the Connecticut-New York border, and that MTA owns the track between that border and New Rochelle. Thus, this order does not address the territory owned by MTA between the Connecticut/New York State line and New Rochelle, or the area owned by ConnDOT between the Connecticut/New York State line and New Haven, both of which are dispatched by Metro-North.

(2) Implementation Schedule

Several commentators felt that the proposed implementation date of October 1, 1999 did not provide sufficient time for financing and equipment installation. MBTA recommended a longer time period to provide sufficient time for responsible design, engineering and prototyping. MBTA also commented that modifications to safety critical systems should not be made on a high speed schedule, and that the proposed

implementation date was unrealistic and would impose premium costs. Conrail commented that the proposed order failed to indicate any target dates or deadlines, which are necessary to determine the migration plan. ConnDOT requested to be removed from the scope and applicability of the order unless full funding is provided and compliance is delayed until 2001. P&W commented that compliance with the proposed October 1999 implementation deadline would be impossible unless Amtrak supplied substitute power and assistance in accomplishing the required retrofits.

The NTSB, however, while recognizing the need for an interim period to allow equipping of locomotives, strongly urged that FRA set a fixed time for compliance.

FRA recognizes that completion of all steps required to implement ACSES by October 1, 1999 depends upon Amtrak rigorously adhering to a well-crafted timetable that allows adequate time for installation of on-board units on all affected operators without depriving those operators of equipment necessary to provide normal service. This should be achievable by combining required inspections and tests with the installation process, provided production runs of on-board equipment commence in a timely way and deliveries are sequenced properly. However, thus far Amtrak has provided FRA with a very limited amount of information concerning its test program and key milestones. Accordingly, this order requires early delivery of a very specific timetable for initial testing and qualification, for installation of on-board equipment on Amtrak, ConnDOT, MBTA, and P&W locomotives, and for final acceptance testing for the system. FRA will evaluate this timetable for reasonableness. To the extent the timetable indicates unacceptable impacts on third parties, or to the extent milestones in this schedule slip, FRA will defer the implementation date as necessary. FRA will keep open the docket of this proceeding to receive any petitions for adjustment of the compliance date.

(3) Financial Responsibility

Commentators expressed the most concern about the overall cost of ACSES, and the related issue of who would bear the cost of equipping non-Amtrak equipment. In addition to the implementation costs of locomotive retrofitting, passive transponders and other related expenses, commentators were concerned about maintenance, equipment down-time, schedule disruptions, and life-cycle expense. Many commentators submitted preliminary estimates of their anticipated costs. MBTA, for instance, has already budgeted the estimated $11 million cost of retrofitting its locomotives with the 9-aspect system into its current locomotive procurement and planned overhaul.

P&W commented that the final order should require the High Speed Passenger Project (Project) to assume the costs of retrofitting locomotives since ACSES is a fundamental component of the Project. P&W indicated that as a small private sector freight operator, it is not subsidized (unlike Amtrak and commuter rail operations), and would not stay competitive with trucking operations on the I–95 corridor if it passed ACSES implementation costs onto its customers. Although P&W objected to paying for ACSES implementation to realize the proposed 150 mph speeds on the NEC-North End, P&W pledged to work with Amtrak to develop an implementation schedule once a retrofit design is available for review.

Senators Edward M. Kennedy and Jack Reed, and Representative Patrick J. Kennedy wrote in support of P&W's views. In his comments, Senator Kennedy reiterated his support for the Project, and agreed with P&W's recommendation that the Project assume P&W's implementation costs.

MBTA also objected to the proposed order, commenting that it would impose unfunded mandates on state authorities. MBTA also recommended that the proposed order be amended to require funding by the Project, and, in addition, to hold MBTA harmless from right of way construction costs.

ConnDOT commented that FRA and Amtrak should provide full funding for ACSES implementation, since this investment in equipment and infrastructure is necessitated by Amtrak's new HST service. ConnDOT indicated that it does not have access to funding required to comply with the order on its Shore Line East operation. Moreover, the tenuous viability of Shore Line East commuter service and the concurrent funding needed for double-sided high speed platforms could force this line of commuter rail service to close. ConnDOT requested that FRA pledge to provide full funding for any mandated conversion to ACSES.

SEPTA commented that NEC commuter railroads have undergone a number of mandatory retrofits in recent years (e.g., speed control, event recorders, ditch lights, and emergency door access), and expect additional required retrofits even though separate funding has never been provided for this work. Since SEPTA capital is limited, requiring commuter railroads to fund systems such as ACSES would force tradeoffs with other safety improvements. SEPTA proposed that the proposed modifications and civil speed enforcement system be funded by Amtrak, as the beneficiary of these proposed requirements.

Conrail commented that the proposed order's purpose is to enable higher speed passenger operations through improved train control systems. Conrail, however, has already invested in the Locomotive Speed Limiter (LSL) system, to provide train control compatible with the NEC cab signal system. While Conrail has a vested interest in improving safety and reducing risk, the additional risks caused by higher speed passenger operations are being introduced by other parties and should not be borne by Conrail. Like other commentators, Conrail urged FRA to structure the final order to provide relief from the cost burden, arguing that ACSES will provide no quantifiable benefits beyond Conrail's current LSL system.

Metro-North requested that its territory be excluded from the final order, stating that it will not operate at high speeds since the catenary and signal systems on the territory between New Rochelle and New Haven are designed for a maximum of 100 mph.

The NTSB, on the other hand, strongly supported the proposed order, since Positive Train Separation (PTS) is one of the Board's "Most Wanted" safety measures. The Board recommended that FRA require implementation of PTS for "all trains where commuter and intercity passenger railroads operate," including the South End.

Allocation of financial responsibility. FRA appreciates that resolving the issue of which organizations bear the ultimate financial responsibility for this safety system is not a simple or straightforward matter. The Project with which this safety enhancement is associated has been aggressively advocated by the Coalition of Northeastern Governors for many years and supported by most members of the northeast congressional delegations. While the Project has national significance, a large share of the benefits will accrue to the region, including potential avoidance of major costs associated with improvement of aviation and highway facilities. As a result of careful planning and aggressive advocacy, the region will enjoy many related improvements to its transportation infrastructure, including the opening of rail access for double

stack intermodal service to the site of the former U.S. Navy facilities at Quonset Point and Davisville, Rhode Island, at a cost to the Federal taxpayer estimated at $55 million.

Amtrak has recognized its stake in this Project by budgeting 100% of wayside costs of ACSES, even though much of the territory involved is actually owned by other public authorities. In addition, Amtrak will bear the cost for equipping its own trains, high-speed and conventional.

Since issuance of the notice of proposed order, Amtrak has communicated with ConnDOT, MBTA, and P&W regarding the logistics of this Project. Although FRA has not been privy to the details of these conversations, copies of letters provided for the docket of this rulemaking affirm that Amtrak has secured an option with its vendor for a sufficient number of on-board equipment sets to the benefit of these other railroads. Amtrak has offered to complete installation at a cost of $40,000, split between approximately $27,000 for the equipment and $13,000 for installation. Amtrak has also offered to assist these railroads by supporting their "efforts to find a source of funding."

FRA is concerned that parties to the rulemaking may have hesitated to make reasonable financial arrangements for this work with the anticipation that FRA would spare them the necessity by allocating that responsibility in this final order. From the point of view of staging the work, FRA has confidence that Amtrak will ensure interim financing to complete equipping of ConnDOT, MBTA, and P&W locomotives. Conrail and its successors (NS and CSX) are major Class I railroads fully capable of handling their own financing. The remaining issue is who will bear the ultimate financial burden, and the considerations pertaining to this question are far more complex than could be developed within the scope of this proceeding.

It seems reasonable to expect that Conrail or its successors will shoulder the cost of this safety improvement and equip as many locomotives as may be appropriate for optimum power utilization over its system. FRA has provided funding under a cooperative agreement with Conrail, NS and CSX for development of an on-board platform capable of providing interoperability among various train control systems, including ACS, ATC, and ACSES. This innovation may help hold down the cost of ACSES compliance.

FRA has carefully considered P&W's comments regarding its role in this safety improvement. FRA appreciates P&W's willingness to cooperate and its concerns regarding the timing of the necessary retrofits (further addressed below), and accepts P&W's representation that at least 22 locomotives will need to be equipped with ACSES and that nighttime operation is not a viable option. However, FRA had not identified from P&W's submission a basis for becoming more directly involved in deciding the matter of financial responsibility.

P&W operates on the NEC largely as a result of an expedited supplemental transaction effected under section 1155 of the Northeast Rail Service Act of 1981 (NERSA) (45 U.S.C. 745). Pursuant to that statute, and under an order of the Special Court established by the Regional Rail Reorganization Act of 1973, Conrail was compelled to surrender certain properties and service rights to a successor railroad that would commit to providing at least 4 years of service on the properties transferred. P&W aggressively pursued that opportunity, with the full knowledge that public planning from the 1960's forward had focused on dramatic passenger service improvements on the NEC between New York and Boston. As recently as the past year, P&W has sought to extend its service rights farther west into Connecticut based upon P&W's claim that the proposed acquisition of Conrail by NS and CSX constitutes a termination of Conrail's residual franchise and activation of rights P&W enjoys under the Special Court's order. As noted above, as an adjunct to the current improvement project, P&W will be the beneficiary of construction of a third track on the NEC between Davisville and "Boston Switch" that will provide the new doublestack access that otherwise would not exist.

MBTA and ConnDOT are also realizing considerable benefits from the improvement project. MBTA is already implementing plans to utilize electric locomotives which will provide improved accelerations, reduced trip times and reduced emission of polluting gases and particulates. ConnDOT and MBTA benefit substantially from Amtrak's substantial investments in the track structure associated with high-speed operations.

All of the operators over the affected territory will enjoy benefits from ACSES, such as the following:

(1) Reduction of risk related to collisions at junctions. This feature may help avoid a collision with a high-speed or conventional passenger train that could result in massive liability.

(2) Reduction of the risk of derailment on curves and secondary collisions following such derailments. Although principally a benefit to high-speed trains, this feature may benefit other passenger operators that wish to take advantage of higher levels of unbalance to achieve improved trip times (which, without ACSES, might be imprudent). Even freight operators may benefit under conditions where cab signals must be cut out due to en route malfunction.

(3) Reduction of risk related to incidents involving roadway workers and their equipment. This benefit should accrue to all operators very nearly in direct proportion to the number of trains they operate.

(4) Improved scheduling and execution of roadway inspections and maintenance associated with the ability to load temporary movement restrictions into the on-board units of trains en route through data radio facilities along the route. This benefit, which may be realized over a period of several years, should help hold down costs and increase efficiency for all operators. If the data radio network is fully exploited, dispatching may also be enhanced through access to real-time train location information.

FRA is aware of contrary arguments for allocation of financial responsibility based upon the institution of high-speed service and the timing of requirements for compliance. These arguments may be worthy of consideration within the full context of the commercial relationships involved, including existing arrangements for allocating costs of operation over the affected NEC segments, contractual arrangements for operation of commuter service, and any relationships established for executing the obligations imposed by this order. Forums such as the Surface Transportation Board, arbitration panels referenced in existing agreements, and courts of appropriate jurisdiction may have a role in determining the ultimate allocation of financial responsibility for implementation of ACSES, should the parties fail to come to mutually acceptable accommodations.

In summary, the arguments related to financial responsibility are complex; and various forums are available to resolve them. It is neither necessary nor appropriate for those determinations to be made in this order, and FRA does not intend by this order to govern the ultimate allocation of financial responsibility for equipping non-Amtrak locomotives and cab cars. However, FRA does require that trains be equipped within a fixed time frame as a condition of operating over the subject territory. This approach is consistent with prior orders of the Interstate

Commerce Commission and FRA actions pertaining to train control, including prior train control orders for the NEC, which have generally required that all trains operating in a designated territory be equipped, without regard to ownership.

(4) ACSES and the Railroad Safety Advisory Committee

In 1996, FRA established the Railroad Safety Advisory Committee (RSAC or the Committee) to implement a more consensual approach to rulemaking. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. To address specific tasks, RSAC formed working groups, comprised of knowledgeable persons from the organizations represented on RSAC. Among the current working groups is a group on positive train control (PTC), which was tasked on September 30, 1997, and met for the first time in November. This group is considering three tasks related to development of performance standards for new train control systems, evaluation of costs and benefits of PTC, and consideration of issues related to implement.

Both APTA and Conrail commented that the proposed order contained no input from the PTC working group. Since the final order would define and implement PTC on the NEC-North End, both recommended that FRA not issue the final order until the PTC working group has completed its task. Conrail also commented that the proposed order would impose similar costs for functions that duplicate PTC.

Although FRA and Amtrak have briefed the RSAC PTC Working Group on ACSES and the proposed order in this proceeding, FRA has not tasked the PTC Working Group with development of this order, which pertains to a specific territory already equipped with ACS and ATC (in contrast to most of remainder of the general rail system). ACSES is intended to supplement the existing train control system on the NEC, completing positive train control functions in a manner that is cost effective and capable of execution within the time period necessary to support enhanced service associated with electrification and the delivery of new HSTs.

Though not required to do so, FRA utilized the Northeast Corridor Safety Committee to develop issues related to ACSES at a meeting in September of 1994, and Amtrak has proceeded since that time to bring ACSES to a high state of maturity. The ACSES system is specifically designed to support dense passenger operations at up to 150 mph. Its architecture provides a particularly suitable approach for NEC and related operations (as illustrated by New Jersey Transit's use of a similar approach to rapidly implement a positive stop system on its own lines).

ACSES uses components and strategies already extensively employed in European train control and other applications. ACSES will be applied to equipment that—with the exception of a small number of freight locomotives on the NEC at any given time—is largely dedicated to NEC operations.

By contrast, the RSAC PTC Working Group is considering the potential for train control systems that would be applied principally in non-electrified territory, over most of which freight operations predominate and shared power arrangements permit locomotives to range extensively. For most of the National rail system, there is presently no ACS/ATC infrastructure on the wayside, and many locomotives are not equipped with responsive apparatus. PTC systems for most of the general rail system will likely utilize a much different architecture that the combination of ACS, ATC and ACSES provided in this and related orders. In concert with a train control project sponsored by the State of Illinois and the FRA, the Association of American Railroads' Transportation Technology Center Inc. is just now commencing work on criteria for interoperability of such systems that is expected to extend past the actual cut-in date for ACSES. The extent to which PTC systems designed for general applications may be capable of supporting train speeds above 110 or 125 miles per hour is not currently known, and widespread deployment of these systems will not be possible until test and demonstration projects now underway reach fruition.

In short, awaiting the results of the RSAC PTC Working Group would defer important safety enhancements for territory where the chosen strategy is ready to implement and particularly appropriate. The PTC Working Group was formed to accelerate movement toward implementation of PTC safety functions, not to impede it. FRA looks forward to institution of high-speed service on the NEC-North End late next year, and implementation of ACSES is necessary to ensure the safety of that service within the context of dense passenger and freight operations.

(5) Nighttime operations

P&W commented that it would not be feasible to limit its train operations to night time, the window within which the order proposed to permit non-equipped trains to run on the NEC, since nighttime switching service would result in a dramatic increase in costs, cause operational disruptions for P&W customers, disrupt neighborhoods, and raise serious safety issues. Conrail commented that while the order was unclear as to whether Conrail would be permitted to operate non-equipped trains using time separation from high speed passenger schedules, mandatory time separation is not an acceptable business solution since Conrail already operates during lightly scheduled passenger periods for efficiency. Although the proposed order properly anticipates potential increases in operation by Conrail or its successors, Conrail commented that operations would be adversely impacted if time separations are mandated for trains not equipped with ACSES.

As discussed above, after considering the comments, FRA is not allowing a window within which non-equipped trains could operate during early morning hours when high-speed trains are not on the territory. Any exceptions will be handled through waivers or spot amendments to the order.

Technical Issues

(1) Flanking Protection

BLE–ATTD asked for an interpretation of the term "flanking protection," and a description of how such protection would work. BLE–ATTD also requested clarification as to how flanking protection would work on the NEC-South End, on whether electric lock derails would be used instead of flanking protection in two-track areas, and on who would enter information into the mobile communication package.

Flanking protection is inherent in interlockings where there are parallel tracks. On a four track railroad, for example, with high speed middle tracks, lower speed outer tracks, and crossovers across all four tracks, a train could not overrun a signal on an adjacent track and encroach onto the path of a high speed train if the signal was lined up for the high speed track straight down one of the middle tracks. Flanking protection is not a new concept designed to work with ACSES since it is already in place at interlockings where there is a parallel route to the track being protected in the event of a signal overrun.

(2) Interoperability With Existing Systems

Several commentators were concerned about the impact of the new ACSES system on current signal systems. Conrail questioned whether its existing 4-aspect system would be compatible with the new 9-aspect system, and whether ACSES would interfere with an ongoing Conrail/CSX/NS project to develop an on-board platform to support multiple system configurations. LIRR also questioned how ACSES would interfere with existing ATC systems, and how the proposed order would impact those railroads sharing track with Amtrak at speeds over 100 mph. APTA wanted to review Amtrak's equipment specifications because of concerns about the reliability and maintainability of untested equipment. APTA also questioned ACSES' impact on existing ATC systems and commuter rail outside the NEC. ConnDOT questioned the benefits of the proposed system, and SEPTA expressed concern about how ACSES would affect operations outside of the areas where wayside equipment is installed.

In Amtrak's proposed system, the brake and propulsion interface between the ACSES and the locomotive would be similar to that utilized in conventional cab signal/ATC systems. The interface would be separate and distinct from the interface used by the cab signal/ATC system. The failure of either the cab signal/ATC system or the ACSES would not prevent the remaining functioning system from performing its intended operation and displaying the proper on-board aspect. Both the signal speed and the civil speed would be displayed with the lower of the two speeds to be enforced.

FRA questioned the need or prudence of displaying both speeds and requested comment on the appropriate means of displaying system information to the locomotive engineer. Amtrak submitted the only response on this issue. In a January 16, 1998 letter, Amtrak clarified that the 9-Aspect Cab Signal/ATC system and the ACSES system are independent systems that share a common display. The 9–ACS/ATC system will continuously display the "signal" speed, dependent upon routes opening up in front of the approaching train, and supported by eight simple codes supplied continuously to the train through the rails. The ACSES system, on the other hand, will enforce the track (civil) maximum authorized speeds, supported by more complex codes received at intermittent intervals from transponders located along the track structure. The "signal" speed is actually part of the cab signal aspect (e.g., "CLEAR 150," "CLEAR 125," "CAB SPEED 80"), with discrete aspects displayed in accordance with Part 236. The "track" speed will be carefully coordinated with the cab signal aspect, and highlighted to clearly indicate which speed (always the lower) governs. The lower speed will always be enforced. Thus, merging the two digital "speed" displays into one "window" would seriously complicate and undermine the stand-alone capability of each system if the other should fail, and would compromise the viability of the redundancy or "back-up" capability envisioned for the total system.

(3) 60 mph Turnouts

Amtrak had proposed, as an interim measure, to install #26.5 straight-frog turnouts at those crossovers where there is insufficient space to install the #32.7 turnouts needed for diverging moves at 80 mph. Since these #26.5 straight-frog turnouts could be used only for diverging moves at 60 mph, ACSES passive transponder sets approaching such locations would enforce a 60 mph civil speed restriction for all routes through the interlocking where the # 26.5 turnout is located. The 60 mph speed restriction would also be backed up by a site specific instruction and an appropriate reflectorized sign on the distant signal.

NTSB, however, remained concerned about how this system would work when a train's on-board ACSES system was cut out, since the train would then be unable to read the speed restrictions transmitted by the temporary transponders. In a June 4, 1998 conversation with FRA (memorialized in the docket), Amtrak stated that implementation of this proposed interim system was unlikely. While long-range planning may eventually require the installation of some 60 mph turnouts on the NEC, none are currently planned for the territory between New Haven and Boston. If such installations become necessary in the future, Amtrak intends to restrict passenger train speeds at these locations to 45 mph, or request a site specific waiver for each location.

Section-by-Section Analysis

The section-by-section analysis below discusses the modifications made from the proposed order in response to comments or technical considerations. Each section of the final order is printed in small type and followed by its analysis. The final order is reprinted in its entirety at the end of this preamble discussion.

Effective Date

As discussed above, this order becomes effective on the date proposed, October 1, 1999. FRA will defer the implementation date if necessary and keep open the docket of this proceeding to receive any petitions for adjustment of the compliance date.

Scope and Applicability

This order supplements existing regulations at 49 CFR Part 236 and existing orders for automatic train control on track controlled by the National Railroad Passenger Corporation (Amtrak) on the Northeast Corridor (NEC) between Washington, D. C., and Boston, Massachusetts. This order applies in territory where Amtrak has installed wayside elements of the Advanced Civil Speed Enforcement System (ACSES), permitting high-speed operations under the conditions set forth below.

All railroads operating on high-speed tracks in such equipped territory between Boston, Massachusetts and New Haven, Connecticut (NEC-North End), or on tracks providing access to such high-speed tracks, shall be subject to this order, including the following entities operating or contracting for the operation of rail service—

Amtrak;
Connecticut Department of Transportation;
Consolidated Rail Corporation and its successors;
Massachusetts Bay Transportation Authority; and
Providence and Worcester Railroad Company.

The requirement that all trains be equipped with operative on-board ACSES applies as specified in paragraph (2) from milepost 73.2 at New Haven, Connecticut, to South Station, Boston, Massachusetts, but applies only to high-speed trains operating on NEC high-speed tracks between Washington, D.C., and New York, New York (NEC-South End), as set forth in paragraph 9(b).

Explanation and Analysis. Amtrak has undertaken the planning and installation of the ACSES as part of its capital program for intercity service on the NEC, consistent with legislation providing for improved rail service in the region. This order requires all carriers operating in ACSES territory to equip their controlling locomotives with operative on-board equipment, consisting of a transponder scanner, an on-board computer, a display unit for the locomotive engineer, and appropriate interface with the cab signal/train control apparatus. The final order clarifies that trains other than HSTs must be equipped on the NEC-North End but not on the NEC-South End.

Over time, the ACSES system may be completed and used by all operators throughout the NEC for routes where speeds exceed 110 mph on any segment, enhancing safety throughout the NEC.

For example, New Jersey Transit Rail Operations (NJT) intends to equip its controlling locomotives with an Advanced Speed Enforcement System (ASES), deriving safety advantages both on the NEC and on certain of its lines where the ASES system can be used as an intermittent train stop system. As Amtrak, NEC-North End operators and NJT demonstrate the benefits and reliability of the system, progress toward universal upgrading of the NEC signal and train control system will be fostered. At a later date, FRA may propose to amend this order to require more extensive use of this new safety technology, as determined by increases in traffic and types of equipment used on the NEC.

Definitions. Unless otherwise provided terms used in this order have the same definitions contained in Part 236. For purposes of this order—

ACSES means a transponder based system that operates independent of the cab signal system, and provides enforcement of permanent speed restrictions, temporary speed restrictions, and stop signals at interlockings.

High-speed train means a train operating in excess of 125 miles per hour (mph) on the NEC-South End, and 110 mph on the NEC-North End.

High-speed track means (1) a track on the main line of the NEC-South End, where the authorized train speed for any class of train exceeds 125 mph, or (2) a track on the main line of the NEC-North End where the maximum authorized train speed for any class of train is in excess of 110 mph.

Immediately adjacent track means a track within 30 feet of a high-speed track when measured from track center to track center.

Signal and train control system means the automatic cab signal/automatic train control system (cab signal/ATC) in effect on the NEC at the date of issuance of this order, as supplemented by ACSES, together with such modifications as Amtrak shall make consistent with this order.

Explanation and analysis. In its comments, BLE–ATTD suggested that FRA define the terms "civil speed enforcement system" (ACSES), "off-peak operating times," and "repair facilities." As explained above, the term "off-peak operating times" is no longer relevant since FRA does not adopt its proposed window for nighttime operations. Similarly, FRA believes it unnecessary to define "repair facilities" considering the limited scope of this order. FRA has added a definition for "ACSES" that is derived from Amtrak's performance specifications.

The proposed order had suggested requiring ACSES on tracks immediately adjacent to (within 30 feet of) high-speed tracks. In this order, FRA extends the requirements for ACSES to trains operating on immediately adjacent tracks where the maximum authorized speed exceeds 20 mph, since such tracks are located within the effective operating envelope of high-speed tracks where derailments could endanger high-speed operations.

Operations are already highly dense on the NEC-North End, with projected increases in both freight and passenger traffic. Track curvature on the NEC-North End also exceeds the average curvature on the NEC-South End, resulting in greater potential concern for compliance with civil speed restrictions. Accordingly, FRA distinguishes between the two operations for purposes of determining applicability of the new performance requirements.

Performance standards. Effective October 1, 1999, the following performance standards and special requirements shall apply:

1. Except as provided in paragraph 9(b), the signal and train control system shall enforce both permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders) on all high-speed tracks and immediately adjacent tracks where the maximum authorized speed exceeds 20 mph. Permanent restrictions shall be loaded into the onboard computer by direct data transfer from a verified database. Temporary restrictions shall be loaded into the onboard computer by direct data transfer from the computer-aided dispatching system. (For not to exceed 12 months following cut-in of the system, use of temporary transponders programmed with appropriate speed restrictions will be deemed to satisfy this paragraph. Thereafter, use of temporary transponders alone shall be acceptable only in the case of an emergency restriction for which transfer of the restriction into the onboard computers of all affected trains is not practicable.)

Explanation and analysis. As discussed above, the existing signal system does not enforce temporary speed restrictions, such as slow orders over defective track or protections for roadway workers. Amtrak had proposed to use temporarily placed transponders, and entry of restrictions into the on-board computer by milepost, to protect train movements and workers and equipment on or adjacent to live high-speed tracks. BLE–ATTD commented that this proposed use of temporary transponders would be insufficient to enforce temporary speed restrictions, and recommended as a failsafe that FRA also require the train dispatcher to enter these restrictions into the on-board computer by milepost.

FRA agrees with BLE–ATTD that temporary transponders should not be routinely used to enforce temporary speed restrictions. Rather, the dispatcher will automatically load temporary restrictions into the on-board computer, through the computer-aided dispatching system and a data radio network, to avoid the possibility of data entry errors by the train crew. Amtrak may use temporary transponders as an alternative routinely for the first 12 months after implementation of this order, and only on an emergency basis thereafter. Data entry by train crews is not an acceptable alternative.

FRA also clarifies that permanent restrictions will also be loaded by direct data transfer from a verified database. FRA is not specifying a method for verifying the database, but expects that Amtrak will utilize appropriate reviews and field verifications to ensure a high level of accuracy.

Nothing in this order excuses compliance with current Amtrak requirements for creating and issuing appropriate authorities or for providing protection for roadway workers. Amtrak has represented to FRA that these protections will remain, supplemented by the additional layer of safety provided by the ACSES. FRA will reopen consideration of this order should Amtrak undertake any substantial revision of current procedures that may have the effect of diminishing safety on the NEC.

2. Except as provided in paragraph 9(b), all trains operating on high-speed track, immediately adjacent track where the maximum authorized speed exceeds 20 mph, or track providing access to high-speed track shall be equipped to respond to the continuous cab signal/speed control system and ACSES.

Explanation and analysis. The benefits of equipping conventional speed trains that operate on immediately adjacent tracks providing access to high-speed tracks may derive primarily from enforcement of positive stop features. If a train is prevented from inappropriately proceeding through a junction and onto a high-speed track, the safety of the subject train and the safety of the oncoming high-speed train are equally assured. FRA believes that most equipped trains will make use of high-speed tracks. (See the discussion in paragraph 9(b) below.)

As discussed above, FRA does not adopt its proposed nighttime operations window and accordingly removes the proposed language from this section.

3. No conflicting aspects or indications shall be displayed in the locomotive cab.

Explanation and analysis. As explained above, FRA believes that Amtrak's dual display (details of which are contained in the program description placed in the docket of this proposed order) is appropriate for a hybrid system such as this. The order

requires consistent information to be displayed to the locomotive engineer. Amtrak plans to implement this principle, while providing information from both the cab signal/ATC system and ACSES, by displaying both of the resulting maximum speeds, with the lower speed to be identified and enforced.

4. The system must enforce the most restrictive speed at any location associated with either the civil/temporary restriction or cab signal aspect.

Explanation and analysis. As discussed above, the most restrictive of the limitations indicated by the cab signal/ATC or ACSES system will be enforced.

5. At interlocking home signals and control points on high-speed tracks or protecting switches providing access to high-speed tracks, the signal and train control system shall enforce a positive stop short of the signal or fouling point when the signal displays an absolute stop. The system shall function such that the train will be brought to a complete stop and cannot be moved again until the first of the following events shall occur: (1) the signal displays a more permissive aspect; or (2) in the event of a system malfunction, or system penalty, the train comes to a complete stop, the engineer receives verbal authority to proceed from the dispatcher, and the engineer activates an override or reset device that is located where it cannot be activated from the engineer's accustomed position in the cab. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment. For not to exceed 12 months following cut-in of ACSES, release of the positive stop feature, under conditions where the signal displays an aspect more favorable than stop, but not less favorable than restricting, may be accomplished by use of the reset device; thereafter, this function shall be accomplished automatically so that it is not necessary for the engineer to leave his or her accustomed position in the cab.

Explanation and analysis. As originally conceived by Amtrak, ACSES would enforce a positive stop through an active transponder near the distant signal which would recognize that the home signal is capable of displaying an absolute stop, and enforce a positive stop even if the home signal actually displayed a restricting indication. FRA requested that Amtrak redesign this feature to better coordinate with the wayside signals. Amtrak agreed to accelerate the development of the ACSES data radio feature to reduce the need to operate the "stop override" button to only those instances where a system failure requires the train to be moved. The Mobile Communication Package (MCP), a data radio feature located at the interlocking, will broadcast a track specific, direction specific, and location specific message to the approaching train which automatically releases the stop-override feature without the engineer having to operate the "stop override" button when the home signal displays "stop and proceed." This message will only be transmitted and only be effective when the train is between the distant signal and the home signal of the interlocking. If the signal displays "restricting," the MCP data radio will broadcast a similar message to the approaching train relieving the train from actually having to stop. Over the past year, Amtrak has consistently advised FRA that MCP data radios may not be installed at all interlockings for some time following cut-in of the system. Amtrak has not been able to specify when this element of the system would be completed. To resolve this concern, FRA has added language to the order requiring that this element of the system be completed not less than 12 months following cut-in.

6. Failure modes of the system will allow for train movements at reduced speeds, as follows:

a. *Failure of Cab Signal/ATC System:* In the event of failure of the cab signal/ATC system on board a train, the cab signal/ATC system will be cut out; however, ACSES shall remain operative and enforce the 79 mph speed limit. If intermediate wayside signals are provided, the train will continue to operate at speeds not exceeding 79 mph subject to indications of the wayside signal system. In territory without fixed automatic block signals, the train will receive information approaching the home signal, through the MCP radio, with the information actually derived from the "flashing lunar signal with the letter "C" displayed at the home signal." When failure occurs after a train has entered such a block, the train will proceed at restricted speed to the next interlocking and may not pass the home signal, regardless of the aspect displayed, until the flashing lunar "Clear to Next Interlocking" signal is displayed. The train may then pass the signal and proceed at a speed not to exceed 79 mph. This speed limit shall be enforced by ACSES.

Explanation and analysis. As proposed, the cab signal/ATC portion of the system will be cut out under operating rules meeting 49 CFR § 236.567 requirements. When the cab signal/ATC portion of the system fails and/or is cut out, ACSES will still be in operation, with the central processing unit (CPU) receiving a message from the cab signal/ATC CPU through a vital link that the cab signal/ATC is cut in and not failed. If ACSES does not receive this message, a speed of 79 mph will be locked in and the display will be dark, other than the 79 mph displayed in the civil speed portion, which will be enforced. ACSES will continue to enforce temporary and permanent speed restrictions and positive stop at home signal locations.

b. *ACSES failure.* If the on-board ACSES fails en route, it must be cut out in a similar manner to the cab signal/ATC system. The engineer will be required to notify the dispatcher that ACSES has been cut out. When given permission to proceed, the train must not exceed 125 mph (NEC-South End) or 110 mph (NEC-North End). All trains with cut out ACSES will operate at conventional train speeds.

Explanation and analysis. Amtrak's comments to the proposed order recommended modifications in the proposed failure modes because the phrase "* * * unless a flashing lunar signal with the letter "N" reflected Amtrak's previous plan, which would present the "clear to next interlocking" information to the train at the distant signal through an active transponder at the location. Under Amtrak's current plan, with the implementation of MCP radio at the interlocking, the train will receive the information as it approaches the home signal, with the information derived from the "flashing lunar signal with the letter "C" displayed at the home signal."

FRA received no other comments on this proposed design standard, which requires trains to fall back to existing maximum speeds when the ACSES must be cut out on a train. However, this approach cannot provide positive stop capability or compensate for higher curving speeds that may be allowed using tilt HSTs. All trains with a cut out ACSES will operate at conventional train speeds whether they are tilt train equipment or conventional equipment. The vital link between CPUs mentioned in 6(a) above will inform the signal CPU that the civil speed CPU is cut out or has failed. The signal speed enforcement system will enforce a default speed limit when ACSES has failed and/or is cut out, with a maximum speed of 110 mph on the NEC-North End and 125 mph on the NEC-South End if ACSES is cut out. This places a premium on compliance with operating rules developed specifically for this purpose (copies of which are available in the docket).

c. *Cab signals/ATC & ACSES failure.* If the cab signal/ATC system and ACSES both fail en route, the systems shall be cut out and the train shall proceed as provided in 49 CFR § 236.567.

Explanation and analysis. FRA received no comment on its proposal to follow the procedures and restrictions in § 236.567 whenever the signal and train control system fails and/or is cut out en route. Accordingly, this section applies as follows whenever the signal and train control system fails and/or is cut out en route:

Where an automatic train stop, train control, or cab signal device fails and/

or is cut out enroute, train may proceed at restricted speed or if an automatic block signal system is in operation according to signal indication but not to exceed medium speed, to the next available point of communication where report must be made to a designated officer. Where no automatic block signal system is in use train shall be permitted to proceed at restricted speed or where automatic block signal system is in operation according to signal indication but not to exceed medium speed to a point where absolute block can be established. Where an absolute block is established in advance of the train on which the device is inoperative train may proceed at not to exceed 79 miles per hour.

These procedures, which are used with present train control systems on the NEC and throughout the nation, have proven to be a reliable and safe method of operating whenever the signal and train control system fails and/or is cut out.

d. *Wayside signal system failure.* If the wayside signal system fails, train operation will be at restricted speed to a point where absolute block can be established in advance of the train. Where absolute block is established in advance of the train, the train may proceed at speeds not to exceed 79 mph.

Explanatian and analysis. FRA received no comment on its proposal to allow the carrier's operating rules to effect these requirements. If a wayside signal system failure occurs, ACSES will continue to function, by enforcing the 79 mph speed, civil and temporary speed restrictions, and positive stops, but an absolute block and proceed not to exceed 79 mph must still be established.

e. *Missing transponder.* If a transponder is not detected where the equipment expected to find the next transponder, the train must not exceed 125 mph (NEC-South End) or 110 mph (NEC-North End) until the next valid transponder is encountered. The 125/110 mph speed restriction will be enforced by the system and "—" will be displayed to indicate that the civil speed is unknown. The audible alarm for civil speeds will sound and must be acknowledged. Speed restrictions previously entered into the system, whether temporary or permanent, will be displayed at the proper time and continue to be enforced. If the missing transponder is a positive stop enforcement transponder at the distant signal to an interlocking, then the system will treat the missing transponder as if it were present and a stop will be required. Since the previous transponder will have transmitted the distance to the stop location, the stop shall be enforced unless a cab signal is received that indicates the interlocking signal is displaying an aspect more favorable than "Stop," "Stop & Proceed," and "Restricting." The 125/110 mph speed restriction will also be enforced regardless of whether the cab signal aspect is being received.

Explanatian and analysis. As proposed, permanent transponders will be programmed with information that includes distance to the next transponder. Wheel rotations will be logged to determine train position between transponders. If a transponder is missing (or is not successfully read), speeds will be slowed to 125 or 110 mph, depending upon the territory involved, until the next valid transponder is detected.

7. When it becomes necessary to cut out the cab signal/ATC system, ACSES, or both, these systems shall be considered inoperative until the engine has been repaired, tested and found to be functioning properly. Repairs shall be made before dispatching the unit on any subsequent trip.

Explanatian and analysis. FRA received no comment on this section, which is adopted as proposed.

8. Other requirements applicable to the system are as follows:

a. Aspects in the cab shall have only one indication and one name, and will be shown in such a way as to be understood by the engine crew. These aspects shall be shown by lights and/or illuminated letters or numbers.

b. Entrances to the main line can be protected by electrically locked derails if the speed limit is 15 mph or less. A transponder set shall cut in ACSES prior to movement through the derail and onto the main line. If the speed limit is greaier than 15 mph, a positive stop will be required. At entrances from a signaled track, ACSES shall be cut in prior to the distant signal and a positive stop enforced at the home signal.

Explanatian and analysis. FRA received no comment on these sections, which are adopted as proposed.

c. An on-board event recorder shall record, in addition to the required functions of § 229.5(g) [of FRA's Railroad Locomotive Safety Standards (49 CFR Part 229)], the time at which each transponder is encountered, the information associated with that transponder, and each use of the positive stop override. These functions may be incorporated within the on-board computer, or as a stand alone device, but shall continue to record speeds and related cab signal/ATC data, even if ACSES has failed and/or is cut out. The event recorder shall meet all requirements of § 229.135.

Explanatian and analysis. The NTSB supported requiring the on-board event recorder to record the time each transponder is encountered, any associated information, and each use of the positive stop override. At a minimum, the event recorder specifications submitted by Amtrak require the recorder to log with time stamps the following data: speed, distance traveled, location by milepost in miles and tenths, track number, brake pipe pressure (for penalty applications), on/off status of ACSES, driver input to ACSES/system acknowledge on/off, transponder messages received, and data from ACSES sent to the driver's display unit and the diagnostic serial port of the driver's diagnostic panel.

9. The following maximum speeds apply on the NEC in territory subject to this order:

a. In ACSES territory where all trains operating on high-speed tracks, adjacent tracks where speeds exceed 20 mph, and tracks providing access to high-speed tracks are equipped with cab signal/ATC and ACSES, qualified and ACSES-equipped trainsets otherwise so authorized may operate at maximum speeds not exceeding 150 mph. The maximum speed over any highway-rail crossing shall not exceed 80 miles per hour where only conventional warning systems are in place. Train speeds shall not exceed 95 mph over any highway-rail crossing where arrangements approved by the Associate Administrator for Safety incorporating four-quadrant gates and presence detection are provided and tied into the signal system, such that a train will be brought to a stop should the crossing be determined to be occupied following descent of the gates. Amtrak shall submit for approval of the Associate Administrator for Safety plans for site-specific improvements with timetables for each of the 13 NEC crossings remaining on the NEC-North End by January 1, 1999.

Explanatian and analysis. As discussed above, FRA extends the requirements for ACSES to trains operating on immediately adjacent tracks where the maximum authorized speed exceeds 20 mph. Speeds are permitted to 95 mph, rather than 80 mph as proposed, provided 4-quadrant gates with presence detection are provided and tied into the train control system. FRA may consider amendment of this order to allow alternative secure arrangements at one or more private crossings following submission of a required crossover safety plan. This section is otherwise adopted as proposed.

b. In ACSES territory on the NEC-South End, where access to any high-speed track is prevented by switches locked in the normal position and a parallel route to the high-speed track is provided at crossovers from adjacent tracks, and where no junctions providing direct access exist, qualified and ACSES-equipped trainsets otherwise so authorized may operate to a maximum speed not exceeding 135 mph on such track; and provisions of this order requiring other tracks and trains to be equipped with the ACSES do not apply.

Explanatian and analysis. FRA received no comment on this section, which is adopted as proposed. Currently maximum speeds for trains on the general rail system are limited to 110 mph. Under a waiver, Amtrak operates

Metroliner service on the NEC-South End at speeds up to 125 mph. This order allows Amtrak to increase its speeds on the NEC-South End to 135 mph by installing the ACSES transponders on the wayside and by equipping new high-speed trainsets with on-board scanners and computers. Other users of Amtrak's NEC-South End high-speed tracks are not required to be equipped for the present, but will benefit from the higher level of safety associated with Amtrak operations. On the NEC-North End, maximum speeds currently top out at 110 mph, with no waiver for high-speed service. This order authorizes operation of qualified trainsets at up to 150 mph in territory where Amtrak has installed ACSES on the wayside, provided Amtrak and other users are equipped.

The phrase "otherwise authorized," as applied to trains, refers to equipment qualified for higher speeds under the track/vehicle interaction limits adopted in the recent revisions to the Track Safety Standards. Metroliner equipment is currently authorized to operate up to 125 mph. FRA anticipates that the new American Flyer trainsets will be qualified to operate up to 150 mph. Other equipment presently operating on the NEC may also qualify to operate at higher than conventional speeds under the revised Track Safety Standards.

10. *Schedule and acceptance requirements.*

a. This order is effective August 21, 1998.

b. Not later than 45 days following publication of this order, Amtrak shall deliver to the Associate Administrator for Safety, FRA, a final program and timetable for completion of pre-qualification tests, submission of final production specifications, availability of on-board equipment from Amtrak's vendor, staging of installation of on-board equipment for which Amtrak takes responsibility, and testing of all wayside and on-board equipment prior to cut-in.

c. Contingent upon FRA's acceptance of the final program and timetable, and FRA's acceptance of the results of pre-qualification and pre-service tests, compliance with requirements of this order for use of ACSES on the NEC-North End is required on and after October 1, 1999.

d. Amtrak may commence operations under paragraph 9(b) of this order utilizing equipment qualified under 49 CFR Part 213, as revised, following FRA's approval of the elements of the final program, timetable and test results pertinent to the subject territory and operations.

Explanation and analysis. Several commentators noted concerns regarding the ability of Amtrak, its vendor and other railroads to stage installation and testing of ACSES within the remaining time available. FRA shares this concern, but believes sufficient time remains prior to scheduled initiation of electrified operations and high-speed service to address these needs if Amtrak and its vendor move briskly, but deliberately, to complete final specifications and tests.

FRA also has noted the need to ensure the quality of pre-service testing of this new system. Although the various elements of the ACSES system have been routinely used in train control applications internationally, integration of the system remains a challenge. Although Amtrak has extensive experience and an excellent record in implementing train control technology, oversight is appropriate to verify that safety remains the first priority in this undertaking.

Accordingly, FRA has included a requirement for submission of a program and timetable for staging the implementation of this system in a manner that does not impair the ability of other railroads to provide quality passenger and freight service. FRA will expect that this timetable reflect consultation with other parties, as necessary and appropriate, and describe how adverse impacts on other parties will be prevented. FRA will cooperate with this process by providing one or more program monitors, who will oversee pre-qualification and pre-service testing of all aspects of the system, advising the Associate Administrator for Safety regarding the readiness of the system as measured against the requirements of this order.

FRA will continue to evaluate the ability of the parties subject to this order to meet the technical requirements specified without disruption of normal rail service and may amend the order as necessary to avoid any such disruptions.

Environmental Impact

FRA has evaluated this final order of particular applicability under its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. This order meets the criteria for classification as a non-major action for environmental purposes.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. Only one small entity is affected by this order, P&W. Their annual revenues are about $22,000,000, and this order will cost them about $1,100,000 in total discounted costs over twenty years. The twenty-year cost is thus about 5% of one year's revenue. This is a substantial impact on that one entity. This order is, however, only one part of a much larger infrastructure improvement, and much of the benefit of that improvement accrues to P&W, including the opening of rail access for double stack intermodal service to the site of the former U.S. Navy facilities at Quonset Point and Davisville, Rhode Island, at a cost to the Federal taxpayer estimated at $55 million. Also, as an adjunct to the current improvement project, P&W will be the beneficiary of construction of a third track on the NEC between Davisville and "Boston Switch" that will provide the new doublestack access that otherwise would not exist. P&W is the only freight railroad operating over those tracks. While the one-time cost of ACSES is a significant fraction of one year's revenue for P&W, the other projects will add far more than that to P&W's net worth, enabling them to compete effectively against other modes. They do not at present face rail competition.

As noted above, P&W operates on the NEC largely as a result of an expedited supplemental transaction effected under section 1155 of the Northeast Rail Service Act of 1981 (NERSA) (45 U.S.C. 745). Pursuant to that statute, and under an order of the Special Court established by the Regional Rail Reorganization Act of 1973, Conrail was compelled to surrender certain properties and service rights to a successor railroad that would commit to providing at least 4 years of service on the properties transferred. P&W aggressively pursued that opportunity, with the full knowledge that public planning from the 1960's forward had focused on dramatic passenger service improvements on the NEC between New York and Boston. As recently as the past year, P&W has sought to extend its service rights farther west into Connecticut based upon P&W's claim that the proposed acquisition of Conrail by NS and CSX constitutes a termination of Conrail's residual franchise and activation of rights P&W enjoys under the Special Court's order.

FRA has sought to identify means to mitigate the impact of this order on P&W. The proposed order would have permitted operations of unequipped trains during nighttime hours when high-speed trains were not running. P&W commented that it would not be feasible to limit its train operations to night time, the window within which the order proposed to permit non-equipped trains to run on the NEC,

since nighttime switching service would result in a dramatic increase in costs, cause operational disruptions for P&W customers, disrupt neighborhoods, and raise serious safety issues. P&W has thus explained that the means suggested in the proposed order would not be helpful, but has not suggested any alternate means of mitigating the impacts that are compatible with early realization of reasonable returns from public investments in improved rail service in the region. As a result of those investments, P&W will be provided access to a third main track over a key route, and with improved clearances, at a cost to the Federal Government almost 50 times greater than the cost to P&W of installing ACSES on its equipment. Further, it is clear that P&W (like all operators on the subject territory) will realize substantial benefits from ACSES. Under these circumstances, FRA is unable to determine that P&W is unduly disadvantaged by the mandate of this order.

Most importantly, FRA believes that there is no alternative that could meet the safety concerns which are FRA's primary mission without imposing similar costs on P&W. The Regulatory Flexibility Act makes clear that concerns about small entities are not to take precedence over the government's responsibility for public safety. Further, it is not the purpose of railroad safety regulations and orders to allocate societal costs among parties with shared interests in transportation improvements. Nevertheless, FRA states unequivocally that it does not by issuance of this order intend to deprive P&W of any claim it may have against Amtrak related to the assignment of responsibility for the cost of these safety improvements.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2,109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 CFR Part 1320, the Office of Management and Budget (OMB) does not need to approve information collection requirements that affect nine or fewer respondents. FRA has determined that information collection requirements in this order will affect fewer than nine railroads, and that therefore OMB approval is not required.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and has been determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC, 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590.

Even though full implementation of ACSES would cost about $200 million, FRA is not ordering that here, nor does FRA plan to require it at present. For the portion of ACSES ordered here, FRA estimates that the direct safety benefits will exceed $44 million, discounted to present value over a 20-year period, through prevention of collisions, overspeed derailments, and incidents involving harm to roadway workers. Additional benefits are expected to include avoidance of other public investments in transportation infrastructure in the region. The allocated cost for installation and maintenance of ACSES on the segments affected by this order is expected to be $36 million for the same period, yielding a net benefit to society of at least $8.5 million, exclusive of non-safety benefits. Of this amount, costs of installation on the right-of-way and on equipment will be about $33 million, which is expected to be spread over three calendar years.

FRA has based its analysis on many assumptions, which yield a great deal of uncertainty. The projected accident rates may be significantly lower without ACSES, in which case the analysis would overstate benefits. FRA believes it is equally likely that the analysis underestimates the accident rate without ACSES, in which case the analysis would understate benefits.

There are several reasons for the uncertainty. The track safety standards have recently been modified, and will permit railroads to set maximum speeds on curves according to a performance standard which will likely permit higher maximum speeds on curves on the affected segments. This will leave less of a margin for error should the engineer permit the train to exceed the civil speed restriction for a curve on which the maximum speed has been increased. At the same time the corridor will be electrified. This will allow the use of electric locomotives which are capable of more rapid acceleration, and therefore are capable of violating civil speed restrictions more often, for longer durations and by greater speeds. FRA realizes that traffic on the affected segments will increase (as did A. D. Little, the firm that analyzed the risks of high speed service for Amtrak), but the consequences of this increase can only be estimated, and this estimate is itself based on uncertain volume estimates.

The largest uncertainty, however, comes from the fact that the root cause of the kinds of accidents which ACSES may prevent is human failure. Human failure occurs somewhat randomly, and is very difficult to predict. FRA is aware that the more opportunities for human failure exist, the greater the likelihood of such failure, but there is no way to say with certainty that so many human failures will occur within such a period.

If one accident like the 1996 Silver Spring, Maryland accident (11 killed, 24 injured) is prevented, this rule will more than pay for itself. That accident was a relatively low speed collision between an Amtrak train and a commuter train, not on the affected segments. Higher speed accidents could easily have costs many times the total cost of the order (for example, the Chase, Maryland accident in 1987 which left 16 killed, 228 injured). Even accidents where a collision is not the first event can be severe. In 1990, an Amtrak train derailed because of overspeed on a curve in Boston, and struck a train on an adjacent track (451 injured). In June 1998, a German high-speed train derailed and struck a bridge, killing approximately 95 people. Although that train was not derailed because of overspeed and did not have crash-energy management systems (as far as we now know), it was travelling at 125 mph, a lower speed than trainsets will be capable of on this corridor, and may be illustrative of what a high-speed derailment could cause.

FRA has already taken steps to see that high-speed trains on this corridor will have crash-energy management systems, but avoiding derailments and collisions with conventional passenger trains is extremely desirable. While it is impossible to know whether this will prevent something which may never happen, or multiple events, preventing just one major accident in twenty years will make the system pay for itself.

Accordingly, for the reasons stated in the preamble, FRA issues the following Final Order:

Final Order of Particular Applicability

Authority: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

Scope and Applicability

This order supplements existing regulations at 49 CFR Part 236 and existing orders for automatic train control on track controlled by the National Railroad Passenger Corporation (Amtrak) on the Northeast Corridor (NEC). This order applies in territory where Amtrak has installed wayside elements of the Advanced Civil Speed Enforcement System (ACSES), permitting high-speed operations under the conditions set forth below.

All railroads operating on high-speed tracks in such equipped territory between Boston, Massachusetts and New Haven, Connecticut (NEC-North End), or on tracks providing access to such high-speed tracks, shall be subject to this order, including the following entities operating or contracting for the operation of rail service—

Amtrak;
Connecticut Department of Transportation;
Consolidated Rail Corporation and its successors;
Massachusetts Bay Transportation Authority; and
Providence and Worcester Railroad Company.

The requirement that all trains be equipped with operative on-board ACSES applies as specified in paragraph (2) from milepost 73.2 at New Haven, Connecticut, to South Station, Boston, Massachusetts, but applies only to high-speed trains operating on high-speed tracks between Washington, DC, and New York, New York (NEC-South End), as set forth in paragraph 9(b).

Definitions

Unless otherwise provided terms used in this order have the same definitions contained in Part 236. For purposes of this order—

ACSES means a transponder based system that operates independent of the cab signal system, and provides enforcement of permanent speed restrictions, temporary speed restrictions, and stop signals at interlockings.

High-speed train means a train operating in excess of 125 miles per hour (mph) on the NEC-South End, and 110 mph on the NEC-North End.

"High-speed track" means (1) a track on the main line of the NEC-South End, where the authorized train speed for any class of train exceeds 125 mph, or (2) a track on the main line of the NEC-North End where the maximum authorized train speed for any class of train is in excess of 110 mph.

Immediately adjacent track means a track within 30 feet of a high-speed track when measured from track center to track center.

Signal and train control system refers to the automatic cab signal/automatic train control system (cab signal/ATC) in effect on the NEC at the date of issuance of this order, as supplemented by ACSES, together with such modifications as Amtrak shall make consistent with this order.

Performance Standards

Effective October 1, 1999, the following performance standards and special requirements shall apply:

1. Except as provided in paragraph 9(b), the signal and train control system shall enforce both permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders) on all high-speed tracks and immediately adjacent tracks. Permanent restrictions shall be loaded into the onboard computer by direct data transfer from a verified database. Temporary restrictions shall be loaded into the onboard computer by direct data transfer from the computer-aided dispatching system. (For not to exceed 12 months following cut-in of the system, use of temporary transponders programmed with appropriate speed restrictions will be deemed to satisfy this paragraph. Thereafter, use of temporary transponders alone shall be acceptable only in the case of an emergency restriction for which transfer of the restriction into the onboard computers of all affected trains is not practicable.)

2. Except as provided in paragraph 9(b), all trains operating on high-speed track, immediately adjacent track where the maximum authorized speed exceeds 20 mph, or track providing access to high-speed track shall be equipped to respond to the continuous cab signal/speed control system and ACSES.

3. No conflicting aspects or indications shall be displayed in the locomotive cab.

4. The system must enforce the most restrictive speed at any location associated with either the civil/temporary restriction or cab signal aspect.

5. At interlocking home signals and control points on high-speed tracks or protecting switches providing access to high-speed tracks, the signal and train control system shall enforce a positive stop short of the signal or fouling point when the signal displays an absolute stop. The system shall function such that the train will be brought to a complete stop and cannot be moved again until the first of the following events shall occur: (1) the signal displays a more permissive aspect; or (2) in the event of a system malfunction, or system penalty, the train comes to a complete stop, the engineer receives verbal authority to proceed from the dispatcher, and the engineer activates an override or reset device that is located where it cannot be activated from the engineer's accustomed position in the cab. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment. For not to exceed 12 months following cut-in of ACSES, release of the positive stop feature, under conditions where the signal displays an aspect more favorable than stop, but not less favorable than restricting, may be accomplished by use of the reset device; thereafter, this function shall be accomplished automatically so that it is not necessary for the engineer to leave his or her accustomed position in the cab.

6. Failure modes of the system will allow for train movements at reduced speeds, as follows:

a. *Failure of Cab Signal/ATC System:* In the event of failure of the cab signal/ATC system on board a train, the cab signal/ATC system will be cut out; however, ACSES shall remain operative and enforce the 79 mph speed limit. If intermediate wayside signals are provided, the train will receive information approaching the home signal, through the MCP radio, with the information actually derived from the "flashing lunar signal with the letter "C" displayed at the home signal." When failure occurs after a train has entered such a block, the train will proceed at restricted speed to the next interlocking and may not pass the home signal, regardless of the aspect displayed, until the flashing lunar "Clear to Next Interlocking" signal is displayed. The train may then pass the signal and proceed at a speed not to exceed 79 mph. The speed limit shall be enforced by ACSES.

b. *ACSES failure.* If the on-board ACSES fails en route, it must be cut out in a similar manner to the cab signal/ATC system. The engineer will be required to notify the dispatcher that ACSES has been cut out. When given permission to proceed, the train must not exceed 125 mph (NEC-South End) or 110 mph (NEC-North End). All trains with cut out ACSES will operate at conventional train speeds.

c. *Cab signals/ATC & ACSES failure.* If the cab signal/ATC system and ACSES both fail en route, the systems shall be cut out and the train shall proceed as provided in 49 CFR § 236.567.

d. *Wayside signal system failure.* If the wayside signal system fails, train

operation will be at restricted speed to a point where absolute block can be established in advance of the train. Where absolute block is established in advance of the train, the train may proceed at speeds not to exceed 79 mph.

e. *Missing transponder.* If a transponder is not detected where the equipment expected to find the next transponder, the train must not exceed 125 mph (NEC-South End) or 110 mph (NEC-North End) until the next valid transponder is encountered. The 125/110 mph speed restriction will be enforced by the system and "—" will be displayed to indicate that the civil speed is unknown. The audible alarm for civil speeds will sound and must be acknowledged. Speed restrictions previously entered into the system, whether temporary or permanent, will be displayed at the proper time and continue to be enforced. If the missing transponder is a positive stop enforcement transponder at the distant signal to an interlocking, then the system will treat the missing transponder as if it were present and a stop will be required. Since the previous transponder will have transmitted the distance to the stop location, the stop shall be enforced unless a cab signal is received that indicates the interlocking signal is displaying an aspect more favorable than "Stop," "Stop & Proceed," and "Restricting." The 125/110 mph speed restriction will also be enforced regardless of whether the cab signal aspect is being received.

7. When it becomes necessary to cut out the cab signal/ATC system, ACSES, or both, these systems shall be considered inoperative until the engine has been repaired, tested and found to be functioning properly. Repairs shall be made before dispatching the unit on any subsequent trip.

8. Other requirements applicable to the system are as follows:

a. Aspects in the cab shall have only one indication and one name, and will be shown in such a way as to be understood by the engine crew. These aspects shall be shown by lights and/or illuminated letters or numbers.

b. Entrances to the main line can be protected by electrically locked derails if the speed limit is 15 mph or less. A transponder set shall cut in ACSES prior to movement through the derail and onto the main line. If the speed limit is greater than 15 mph, a positive stop will be required. At entrances from a signaled track, ACSES shall be cut in prior to the distant signal and a positive stop enforced at the home signal.

c. An on-board event recorder shall record, in addition to the required functions of § 229.5(g) [of FRA's Railroad Locomotive Safety Standards (49 CFR Part 229)], the time at which each transponder is encountered, the information associated with that transponder, and each use of the positive stop override. These functions may be incorporated within the on-board computer, or as a stand alone device, but shall continue to record speeds and related cab signal/ATC data, even if ACSES has failed and/or is cut out. The event recorder shall meet all requirements of § 229.135.

9. The following maximum speeds apply on the NEC in territory subject to this order:

a. In ACSES territory where all trains operating on high-speed tracks, adjacent track where the maximum authorized speed exceeds 20 mph, and tracks providing access to high-speed tracks are equipped with cab signal/ATC and ACSES, qualified and ACSES-equipped trainsets otherwise so authorized may operate at maximum speeds not exceeding 150 mph. The maximum speed over any highway-rail crossing shall not exceed 80 mph where only conventional warning systems are in place. Train speeds shall not exceed 95 mph over any highway-rail crossing where arrangements approved by the Associate Administrator for Safety incorporating four-quadrant gates and presence detection are provided and tied into the signal system, such that a train will be brought to a stop should the crossing be determined to be occupied following descent of the gates. Amtrak shall submit for approval of the Associate Administrator for Safety plans for site-specific improvements with timetables for each of the 13 NEC crossings remaining on the NEC-North End by January 1, 1999.

b. In ACSES territory on the NEC-South End, where access to any high-speed track is prevented by switches locked in the normal position and a parallel route to the high-speed track is provided at crossovers from adjacent tracks, and where no junctions providing direct access exist, qualified and ACSES-equipped trainsets otherwise so authorized may operate to a maximum speed not exceeding 135 mph on such track; and provisions of this order requiring other tracks and trains to be equipped with ACSES do not apply.

10. Schedule and acceptance requirements.

a. This order is effective August 21, 1998.

b. Not later than 45 days following publication of this order, Amtrak shall deliver to the Associate Administrator for Safety, FRA, a final program and timetable for completion of pre-qualification tests, availability of on-board equipment from Amtrak's vendor, staging of installation of on-board equipment for which Amtrak takes responsibility, and testing of all wayside and on-board equipment prior to cut-in.

c. Contingent upon FRA's acceptance of the final program and timetable, and FRA's acceptance of the results of pre-qualification and pre-service tests, compliance with requirements of this order for use of ACSES on the NEC-North End is required on and after October 1, 1999.

d. Amtrak may commence operations under paragraph 9(b) of this order utilizing equipment qualified under 49 CFR Part 213, as revised, following FRA's approval of the elements of the final program, timetable and test results pertinent to the subject territory and operations.

Issued in Washington, D.C. on July 10, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 98–19431 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards and Research and Development Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on September 17, 1998, beginning at 9:45 a.m. and ending at approximately 12:30 p.m., at the Tysons Westpark Hotel, McLean, VA. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Tuesday, September 1, 1998, to the address shown below or by e-mail. If sufficient time is available, questions received after September 1 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 1, 1998, and the issues to be discussed,

will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Thursday, September 10, 1998, and will be available at the meeting. The next NHTSA vehicle regulatory program meeting will take place on Thursday, December 17, 1998 at the Clarion Hotel, Romulus, MI.

ADDRESSES: Questions for the September 17, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, NW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page (length has varied from 100 to 150 pages), upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB September 1, 1998.

Issued: July 17, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–19501 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4026]

Decision That Nonconforming 1989–1991 Chevrolet Suburban Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1989–1991 Chevrolet Suburban multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989–1991 Chevrolet Suburban MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturer as complying with the safety standards (U.S.-certified 1989–1991 Chevrolet Suburban MPVs), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective July 22, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1989–1991 Chevrolet Suburban MPVs are eligible for importation into the United States. NHTSA published notice of the petition on February 18, 1998 (62 FR 8251) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–242 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1989–1991 Chevrolet Suburban MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1989–1991 Chevrolet Suburban MPVs originally manufactured for sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 16, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–19481 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4078]

Notice of Receipt of Petition for Decision that Nonconforming 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 21, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL –401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1996–1999 Moto Guzzi Daytona RS motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles to U.S. certified 1996–1999 Moto Guzzi Daytona RS motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as U.S. certified 1996–1999 Moto Guzzi Daytona RS motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles are identical to U.S. certified 1996–1999 Moto Guzzi Daytona RS motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars*, 122 *Motorcycle Brake Systems*, 123 *Motorcycle Controls and Displays*, and 205 *Glazing Materials*.

The petitioner also states that non-U.S. certified 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS motorcycles are equipped with vehicle identification number plates meeting the requirements of 49 CFR Part 565.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S. model taillamp assemblies which incorporate rear sidemarker lamps and side reflectors.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 16, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–19482 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4033; Notice 1]

Cosco, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated, of Columbus, Indiana, has determined that a number of child restraint systems fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Cosco has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle

Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 213, S5.4.3.5(b), requires that after the dynamic buckle release test prescribed in S6.2 of the standard, any buckle in a child restraint system belt assembly designed to restrain a child using the system shall release when a force of not more than 71 Newtons (N) (16 pounds) is applied, provided that the conformance of any child restraint to this requirement is determined using the largest of the test dummies specified in S7 for use in testing that restraint when the restraint is facing forward, rearward, and/or laterally. Additionally, S5.4.3.5(d) requires that the buckle latch of a child restraint system shall not fail, nor gall or wear to an extent that normal latching and unlatching is impaired when tested in accordance with the buckle latch test requirements in S5.2(g) of FMVSS No. 209, "Seat Belt Assemblies."

Four Cosco Touriva T-shields, Model 02–096, were tested as part of the National Highway Traffic Safety Administration's (NHTSA) fiscal year (FY) 1996 child restraint testing program. When tested with the 3-year-old dummy in the upright position, the plunger pin of the buckle assembly was sheared, and the buckle released during the dynamic test. In a retest conducted using the same configuration, the post-test buckle release force exceeded 71 N (77.8 N, or 17.5 lb). Units tested with the infant dummy and with the 3-year-old dummy in the reclined position were in compliance. NHTSA notified Cosco of the test failures noted above, as documented in Calspan Report Number 213–CAL–96–013. In its own investigation, Cosco was able to obtain results in isolated tests similar to those in the FY96 NHTSA tests. Accordingly, Cosco has confirmed that it has manufactured and distributed a limited number of Touriva convertible child restraint systems that may not comply with the above requirements. The units potentially exhibiting noncompliance are those Touriva T-shield models manufactured from May 1, 1996, through November 26, 1997, as follows: Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover (Model 02–084, 5/96 to 11/97, quantity: 11,018); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02–094, 5/96 to 11/97, quantity: 7,202); Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover with Pillow (Model 02–096, 5/96 to 10/97, quantity: 1,411); Touriva Convertible Safe T-Shield, Partial Wrap Vinyl Cover (Model 02–404, 5/96 to 5/97, quantity: 682); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02–821, 5/96 to 11/97, quantity: 186,040).

Cosco supports its application for inconsequential noncompliance with the following:

> Cosco was able to obtain units manufactured both on and near the dates in question as well as subsequent production units. After extensive in-house dynamic testing and analysis, units were sent to Calspan for testing. Cosco made repeated trips to Calspan in an attempt to understand and resolve this potential noncompliance. Cosco was able to obtain results in isolated tests similar to that of the FY96 NHTSA tests. Cosco was not able to attribute the potential noncompliance to the design or manufacture of any particular component. We ran dozens of in-house tests and spent hundreds of hours in an effort to determine the reason isolated units manufactured on or after 5/10/96 were inconsistently exhibiting high post-test buckle release pressure and shearing of the plunger pin. The results have been inconsistent. The T-shield units involved in NHTSA's FY97 test program tested successfully, but were of identical construction and design to those which failed the FY96 testing.
>
> Since the Touriva T-shield models were first introduced in 1994, Cosco has required the vendor who is molding the housing and plunger pin and assembling the buckle assembly housing, spring and plunger pin to perform a pretest buckle release pressure on *each* assembly. No buckle assembly exhibiting a pretest buckle release pressure of over 13 lb nor under 10 lb has ever been used in the production of any Touriva convertible child restraint, including the T-shield units in question. In searching for possible explanations for the isolated deficiencies, Cosco made a material change to the housing of the buckle assembly and the material of the plunger pin. This material change has resulted in eliminating any potential noncompliance related to both the high post-test buckle release pressure and the shearing of the plunger pin, although the minimal differences in properties between the materials does not adequately or conclusively explain the test results. All T-shield units manufactured after November 27, 1997 have a housing manufactured using 30% glass filled nylon instead of ABS and a plunger pin using Delrin 100P versus Delrin 500. The T-shield units supplied for NHTSA FY98 testing had the new materials incorporated into the buckle assembly.

In its Part 573 Report to the agency, Cosco stated that it:

> . . . does not believe that any defect or repeatedly discernable noncompliance exists with the subject child restraint * * * While a small percentage of the Calspan tests performed on the subject units did exhibit noncompliance results, a vast majority of identical child restraints manufactured during the same period produced complying test results. Cosco concludes from this testing and our exhaustive analysis of the subject child restraints and testing procedures that the noncompliance test results are not the result of the design, materials, or manufacturing processes involved in the production of the subject child restraints, but rather test variables and anomalies that are inherent in the 213 test procedures.

In the summary of its application for inconsequential noncompliance, Cosco stated that it "does not believe the inconsistent deficiency exhibited by a few of the tested units warrants a recall." Cosco concluded that "reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists."

Interested persons are invited to submit written data, views, and arguments on the application of Cosco described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 21, 1998.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 16, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–19427 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4029; Notice 1]

Pipeline Safety: Implementation of One-Call Systems Study

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS).

ACTION: Notice of public meeting.

SUMMARY: This notice announces RSPA's intent to establish a team of government, industry, and public representatives to study best practices in damage prevention to underground utilities. The team will evaluate the effectiveness of various existing one-call notification systems in protecting the public, individuals engaging in excavation activities, and the environment, and in preventing disruptions to public services and damage to underground facilities like pipelines, telecommunications, electric, water and sewer lines. This notice also announces a public meeting to solicit views and recommendations on the direction of this study of one-call system best practices and to identify sources of information which should be considered as part of the study. RSPA invites interested parties to attend this public meeting, and to make presentations on views and areas of investigation which should be considered in the study, and to identify persons and organizations who should participate on the study team.

DATES AND LOCATION: The public meeting will be held on August 25–26, 1998, at the Ritz Carlton, Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

ADDRESSES: Comments on the subject matter of this notice should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–4029. The Dockets facility is open from 10:00 a.m. to 5:00 p.m. Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice. Further information can be obtained by accessing OPS' Internet Home Page at: ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Excavation damage is the leading cause of pipeline failures and a leading cause of service interruptions for other underground facilities; it is usually preventable. Excavation damage affects vital services and products delivered through all underground facilities: telecommunications, electricity, cable television, fiber optics, water and sewer lines, and petroleum and natural gas pipelines. These accidental dig-ins can result in loss of life, injuries, severe property damage and loss of vital services for homes and businesses.

At the heart of damage prevention is better communications between excavators and operators of underground facilities. One-call systems provide a mechanism for excavators to notify facility operators of planned excavation, so that underground utilities can mark where their equipment and facilities are located to prevent damage. The approach to improving protection need not be costly or complicated.

Study of Best Practices

RSPA's Office of Pipeline Safety (OPS) is planning to study damage prevention practices associated with existing one-call notification systems. The purpose of the study is to gather and assess hard factual data in order to determine which existing one-call notification systems practices appear to be the most effective in protecting the public, excavators, and the environment and in preventing disruptions to public services and damage to underground facilities. The findings of the study will inform state agencies and one-call system operators about practices, technologies and methods that can improve overall system performance.

Subsequent to the completion of the study in FY 1999, OPS and other organizations planning implementation expect to provide financial assistance to States as an incentive for one-call systems to implement those practices, technologies and methods which best can improve overall one call system performance.

Damage Prevention Quality Action Team

In recent years, when OPS needed to bring diverse parties together for problem-solving on approaches to risk management, mapping, and damage prevention, the Quality Action Team (QAT) model has been an effective process for data gathering, determining options and collecting and addressing issues. Most recently, OPS has used this approach to address damage prevention education. The peer joint government/industry Damage Prevention Quality Action Team (DAMQAT), was established in October 1996. DAMQAT's mission is to increase awareness of the need to protect underground facilities, including pipelines, and to promote safe digging practices.

DAMQAT is composed of representatives from federal and state government agencies, gas and hazardous liquid pipeline trade associations, a contractor, a one-call systems association, and the insurance and telecommunications industries. The team launched a nationwide damage prevention public education campaign in May, 1998, that is currently being pilot tested in three states. The campaign instructs professional excavators and the public on underground damage prevention, including use of one-call systems, and effective ways to locate underground facilities at excavation sites. The goals are to emphasize damage prevention measures beyond one-call and enhance communication among all parties at an excavation site. The team will evaluate the pilot findings to adapt the materials before launching the nationwide campaign.

The team described in this notice will work in parallel with the DAMQAT, but will focus on the range of damage prevention issues beyond education. The new team will be drawn from the key players in damage prevention, with experience in best practices for operating one call systems and centers, and developing and using new technologies for communications, locating and marking underground facilities, and monitoring excavation activities.

Scope of the New Study

Numerous factors affect the effectiveness and efficiency of one call system operations. Improving system efficiency is expected to reduce the risk of damage to underground facilities in numerous ways by increasing the number of excavators who call, by improving the accuracy of the marking and locating process, and improving communications between the operator and the excavator. Area for improvements that will be considered include, but are not limited to:

(1) Encouraging participation by all parties concerned with underground facility damage prevention;

(2) Promoting awareness;

(3) Receiving and distributing information;

(4) Verifying system effectiveness;

(5) Mapping and locating underground facilities;

(6) Preventing damage through notification;

(7) Rapid response to emergency situations;

(8) Marking accuracy and timeliness;

(9) Risk to personnel;

(10) Other characteristics relative to effective damage prevention notification; and

(11) Encouraging compliance through effective enforcement.

Composition of the New Quality Action Team

OPS seeks to identify organizations who are interested in contributing to the study as a working member of this joint government/industry team. OPS plans to establish a core team of 12–15 representatives of diverse organizations concerned with damage prevention systems. Subteams will be formed to devote attention to in-depth assessment of particular subject areas.

In conducting the study, it is important to include the broadest possible representation of parties who are concerned about damage prevention to comprehensively investigate all aspects of the notification, locating, marking and excavation process. Among the organizations who have expressed interest in participating in the study process are:

- Association of Oil Pipelines;
- American Gas Association;
- American Petroleum Institute;
- Interstate Natural Gas Association of America;
- American Public Gas Association;
- American Road and Transportation Builders Association;
- Associated General Contractors;
- National Utility Contractors Association;
- Competitive Telecommunications Association;
- Edison Electric Institute;
- Gas Processors Association;
- American Public Works Association;
- One Call Systems International;
- National Cable Television Association;
- United States Telephone Association;
- UTC, the Telecommunications Association;
- National Association of Regulatory Utility Commissioners;
- National Association of Pipeline Safety Representatives; and
- Office of Pipeline Safety.

OPS wishes to identify other organizations who wish to contribute as well as any members of the public who want to be considered and are willing to work on the study team. Specifically, OPS would like to hear from:

- other Federal government agencies (i.e. Federal Communications Commission;
- State government agencies, such as State DOTs, planning organizations, etc;
- underground public utility organizations (water, sewer, electric, fiber optics, etc.;
- representatives from the railroad industry;
- representatives from the insurance industry
- agencies and organizations representing environmental interests;
- other organizations representing excavators;
- organizations representating other transportation interests; and
- representatives from the public.

In order for OPS to effectively identify, consider and assemble all parties interested in participating on the team, it is important that actual representatives of the constituencies attend the public meeting to express their interest and qualifications.

Criteria for Study Participants

1. To assure the broadest possible data, OPS seeks participation from individuals who represent organizations with defined missions and objectives related to preventing damage to underground utilities. Their organizations should have the means and ability to communicate to their membership throughout the study process.

2. To provide for timely and efficient assessment of one-call system methods, individuals interested in contributing should have existing knowledge of the factors, factual data, history and aspects affecting one-call system performance either nationally, regionally or locally, and/or in-depth understanding of a particular method or process for improving the performance of the 11 factors listed above.

3. To conduct the review of methods and complete and produce a final report, individuals interested in contributing should have abilities to work both individually and in a group environment.

4. To benefit from public perspective on one-call services, OPS would like for members of the public to participate in the public meeting, and serve on the team. These individuals should be capable of assessing the issues of one-call systems and damage prevention techniques, and ideally would be affiliated in some capacity with an organization(s) affected by, or concerned with, damage prevention programs.

Information Sharing

OPS would like interested parties to propose topics that they feel the team should address, including best practices of one-call systems, locating and marking techniques, data collection, and other technological advances that the team should assess and evaluate during the course of the study.

OPS plans to promote information exchange between the team and interested public parties, and to provide current information regarding the study group proceedings. We will communicate about issues the team is considering and the study progress by numerous means including electronic and newsletter/print media. Details regarding communication will be provided at the public meeting.

Schedule for Implementation

Following the meeting, OPS and organizations who have expressed an interest in participating will synthesize the information presented at the meeting and select a group of representatives to serve on the core team and the subteams. OPS believes the team will meet about every four to six weeks once the group has been established for up to a year in duration. Contract support will also be addressed at the post-meeting gathering, including discussion of appropriate parties to assist the team with facilitation, recording meeting notes, providing technical assistance, and report writing.

The planning organizations will also discuss how the team will produce the final report that identifies those practices of one-call systems that are the most successful in preventing damage to underground facilities, and that provide effective and efficient service to excavators and underground facility operators.

Meeting Agenda

For planning purposes, RSPA requests that parties interested in joining the team, or commenting on the team's focus, should be prepared to:

- make a presentation at the meeting about their qualifications, or necessary qualifications for one to serve on the team or subteam to represent an organization;
- or express their views and recommendations on issues or practices that should be considered.

Interested persons should notify Eben Wyman on (202) 366–0918 by August 17, 1998, with name, organization or interest, and type of presentation so that an agenda can be planned and all parties can be accommodated. In the event parties cannot attend, they can send a presentation in writing to OPS and we will present a summary during the meeting.

RSPA anticipates attendance and participation by government, the public, and a broad range of interested parties in the excavation and public utility communities, and representatives of other underground facility organizations.

Issued in Washington, DC on July 16, 1998.

Stacey L. Gerard,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 98–19428 Filed 7–21–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20922]

Greyhound Lines, Inc.—Continuance in Control—Autobuses Amigos, L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Greyhound Lines, Inc. (Greyhound), a motor carrier of passengers, and its wholly owned noncarrier subsidiary, Sistema Internacional de Transporte de Autobuses, Inc. (SITA), jointly seek approval under 49 U.S.C. 14303 to continue in control of SITA's wholly owned subsidiary, Autobuses Amigos, L.L.C. (Amigos), upon Amigos becoming a motor carrier of passengers. Persons wishing to oppose the transaction must follow the rules at 49 CFR 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the application.

DATES: Comments are due by September 8, 1998. Applicants may reply by September 28, 1998. If no comments are received by September 8, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC–F–20922 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. Also, send one copy of comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Greyhound holds nationwide operating authority in Docket No. MC–1515. It also controls the following regional interstate motor carriers of passengers: Valley Transit Company, Inc. (MC–74), operating in Texas; Carolina Coach Company, Inc. (MC–13300), operating in Delaware, Virginia and North Carolina; Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), operating in Texas, New Mexico, Colorado, Kansas and Oklahoma; Continental Panhandle Lines, Inc. (MC–8742), operating in Oklahoma and Texas; and Vermont Transit Co., Inc. (MC–45626), operating in Maine, Vermont, Massachusetts and New York.

SITA controls Americanos U.S.A., L.L.C. (Americanos) (MC–309813), a nationwide passenger carrier, Gonzalez, Inc., d/b/a Golden State Transportation Company (MC–173837), operating in the Southwest, and Los Rapidos, Inc. (MC–293638), operating in California.

Amigos filed an application on May 28, 1998, with the U.S. Department of Transportation, Federal Highway Administration to operate as a regional motor carrier of passengers to provide scheduled, regular-route operations between the Mexican border crossing points in Texas and points in the Southeast.

Applicants state that the aggregate gross operating revenues for Greyhound and its affiliated motor carriers of passengers exceeded $2 million during the 12 months preceding this application. They assert that Amigos was organized to render specialized services designed to accommodate the travel requirements of the Spanish speaking passengers traveling between Brownsville, TX, and Los Angeles, CA, and between Brownsville and Miami, FL, and other points in the Southeast. Applicants state that the membership interests in Amigos have been placed into a voting trust [1] pending disposition of this proceeding.

Applicants certify that: (1) Greyhound and its affiliates (except Americanos, which is not yet rated) hold satisfactory safety ratings,; (2) Amigos, before commencing operations, will have appointed agents in each of the states in which it anticipates operating, in accordance with 49 U.S.C. 13303 and 13304 and 49 CFR 366.1 *et seq.*, and will have procured liability insurance as required by 49 U.S.C. 13906 and 49 CFR 387.1, *et seq.* (Greyhound and its affiliates are in compliance with these provisions); (3) Greyhound, SITA, and Amigos are not domiciled in Mexico and are not owned or controlled by a person of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result from the proposed transaction; and (3) the interest of carrier employees affected by the proposed transaction. We find, based on the application, that the proposed transaction is consistent with the public interest and should be authorized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed continuance in control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on September 8, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; and (2) the U. S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: July 16, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–19544 Filed 7–21–98; 8:45 am]

BILLING CODE 4915–00–P

[1] A voting trust agreement was informally approved by the Board's Secretary by letter dated June 18, 1998.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; American Surety and Casualty Co., Hamilton Mutual Insurance Co. of Cincinnati, OH Heart of America Fire and Casualty Co. and North Star Reinsurance Corp.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 19 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above-named Companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable

sureties on Federal bonds were terminated effective June 30, 1998.

These Companies were last listed as acceptable sureties on Federal bonds at 62 FR 35548, July 1, 1997.

With respect to any bonds currently in force with above listed Companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html or through our computerized public bulletin board system, FMS Inside Line, at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: July 10, 1998.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 98–19429 Filed 2–21–98; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on July 22 in Room 600, 301 4th Street, SW, Washington, DC, from 9:00 to 10:00 a.m.

At the 9:00 a.m. the Commission will meet with Ms. Jan Brambilla, Director, Office of Human Resources, USIA, and Mr. Jim Nealon, Foreign Service Personnel, USIA, to discuss Foreign Service personnel "cones" and public diplomacy specialists.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: July 16, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–19524 Filed 7–21–98; 8:45 am]

BILLING CODE 8230–01–M

Wednesday
July 22, 1998

federal register

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 286–287

Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 286 and 287

RIN 0970–AB78

Tribal Temporary Assistance for Needy Families Program (Tribal TANF) and Native Employment Works (NEW) Program

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to issue regulations to implement key Tribal provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Balanced Budget Act of 1997, Pub. L. 105–33. PRWORA established the Tribal Temporary Assistance for Needy Families program and a tribal work program which we have named the Native Employment Works (NEW) program at the suggestion of some Indian tribes. The Balanced Budget Act of 1997 made technical corrections to PRWORA.

DATES: You must submit comments by September 21, 1998.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Community Services, Division of Tribal Services, 5th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http:/www.acf.dhhs.gov/news/welfare and follow any instructions provided.

We will make all comments available for public inspection on the 5th Floor, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. Eastern time, except for holidays. For additional information, see **SUPPLEMENTARY INFORMATION** section of the preamble.

FOR FURTHER INFORMATION, CONTACT: John Bushman, Director, Division of Tribal Services, Office of Community Services, ACF, at 202–401–2418, Raymond Apodaca, at 202–401–5020 or Ja-Na Oliver, NEW Team Leader at 202–401–5713.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Comment Procedures

We will not consider comments received beyond the 60-day comment period in developing the final rule. Because of the large volume of comments we anticipate, we will accept written comments only. In addition, your comments should:

- Be specific;
- Address issues raised by the proposed rule;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the comments we receive. However, we will review and consider all comments that are germane and that are received during the comment period.

Table of Contents

I. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

On August 22, 1996, President Clinton signed the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (PRWORA) into law. The first title of this new law (Pub. L. 104–193) establishes a comprehensive welfare reform program which is designed to change the nation's welfare system. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limited assistance.

PRWORA repeals the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repeals the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and Emergency Assistance (EA).

The new law reflects agreement on several key principles:

- Welfare programs should be designed to help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be "one size fits all." The system should allow States, Tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should place more emphasis on program results.

The new law provides federally-recognized Indian tribes, or consortia of such Tribes, the opportunity to apply for funding under section 412 of the Social Security Act (or the Act), as amended by PRWORA, to operate their own TANF programs beginning July 1, 1997.

Indian tribes that choose to administer a Tribal TANF program have been given broad flexibility to set TANF eligibility rules and to decide what benefits are most appropriate for their service areas and populations. Tribes may try new, far-reaching approaches that can respond more effectively to the needs of families within their own unique environments. The TANF program challenges Tribal governments to foster positive changes in the culture of the welfare system and to take responsibility for program results and outcomes.

Under the new statute, TANF funding and assistance for families comes with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves and their families before their time-limited assistance runs out. Tribes who take on the responsibility for administering a TANF program will be expected to

assist recipients making the transition to employment. Tribal TANF grantees also will be expected to meet work participation rates and other critical program requirements in order to avoid penalties and maintain their Federal funding.

In meeting these expectations, Tribes need to examine the needs of their service areas and service populations, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers.

In addition to establishing the Tribal TANF program, PRWORA authorizes funding, to the former Tribal JOBS grantees, for a tribal program "to make work activities available * * *". Based upon Tribal recommendations, we have designated this tribal work activities program as the Native Employment Works (NEW) program. Tribes are encouraged to focus the NEW program on work activities and on services which support participation in work activities. In addition, Tribes are encouraged to create and expand employment opportunities when possible.

The new welfare reform legislation not only gives Tribes new opportunities, as in the case of the TANF program, and continued responsibilities, as in the case of the NEW program, it also dramatically affects intergovernmental relationships. It challenges Federal, Tribal, State and local governments to foster positive changes in the culture of welfare. It transforms the way agencies do business, requiring true partnerships with each other, community organizations, businesses and needy families.

II. Regulatory Framework

A. Consultations

In the spirit of both regulatory reform and PRWORA, and consistent with the Secretary's policy on consultation with Indian tribes, we implemented a broad consultation strategy prior to drafting this Notice of Proposed Rulemaking (NPRM). We had discussions with a number of different audiences, including representatives of Tribal, State, and local governments. We solicited both written and oral comments and worked to ensure that concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

The purpose of these efforts was to gain a variety of informational perspectives about the potential benefits and pitfalls of various regulatory approaches.

The discussions and written comments were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that, although we used this early input to draft the proposed rules, this is not the only opportunity to provide comments. All interested parties now have the opportunity to comment on specific policy proposals contained in this NPRM. We will review all comments submitted during the comment period and will take them into consideration before issuing a final rule.

B. Related Regulations Under Development

This NPRM addresses the provisions of the Tribal TANF and NEW; the NPRM on the State TANF program was published in the **Federal Register** on November 20, 1997. This NPRM addresses, but does not contain proposed rules for the Alaska TANF comparability criteria, which the Secretary will develop in consultation the State of Alaska and the Alaska Native entities eligible to operate TANF. We will publish the Alaska TANF comparability criteria at a later date. There are no other regulations related to the Tribal TANF or NEW program under development.

This NPRM does not include the provisions for the new Tribal Welfare-to-Work (WTW) program at section 412(a)(3) of the Act, as created by section 5001(c) of Pub. L. 105–33. The Secretary of Labor is responsible for issuing rules for this program.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and the amendments contained in Pub. L. 105–33.

Pub. L. 105–33 created the new Welfare-to-Work (WTW) program, made a few substantive changes to the TANF and NEW program, and made numerous technical corrections to the TANF statute. Throughout the preamble discussion and the appendices, you will note references to the amendments made by this legislation. However, as previously mentioned, this NPRM includes only a limited number of changes related to the new WTW provisions. The Department of Labor has primary responsibility for administering the program and issuing the WTW regulations. We have responsibility for issuing rules on the WTW data collection requirements, but will do that at a subsequent date.

D. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with our existing welfare regulations should notice that this package incorporates a distinctly different, more readable style.

E. Scope of This Rulemaking

Because there are no existing Tribal TANF or NEW regulations, this package is intended to cover the proposed rules as they relate to the provisions of the Tribal TANF and NEW programs (including definitions of common and frequently used terms).

F. Applicability of the Rules

A Tribe may operate its TANF and/or NEW program under a reasonable interpretation of the statute prior to publication of final rules. Thus, in determining whether a Tribe is subject to a penalty under TANF or a disallowance under the NEW program, we will not apply regulatory interpretations retroactively. However, Tribes are bound by any Policy Announcements issued by ACF, including those issued in advance of final regulations.

III. Principles Governing Regulatory Development

A. Tribal Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation provides Tribes with the opportunity to reform welfare in ways that work best to serve the needs of their service areas and service populations. It gives Tribes the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

To ensure that our rules support the legislative goals of PRWORA, we are also committed to gathering information on how Tribes are responding to the new opportunities available to them. We reserve the right to revisit some issues, either through proposed legislation or regulation, if we identify situations where our rules are not furthering the objectives of the Act.

B. Regulatory Authority

Early consultation input from Indian tribes suggested that the intent of Congress to provide for program flexibility should limit the extent to which we regulate Tribal TANF and NEW programs. However, Congress gave us more authority to regulate the Tribal TANF and NEW programs than State TANF programs.

Unlike the process for reviewing and accepting plans for State TANF, the statute requires us to approve Tribal TANF plans. While we propose maximum flexibility in program design and procedures, we believe that it is important for us to set forth, in regulations, the process for the submission and approval of plans and other program requirements.

Tribal TANF programs must meet minimum work participation rates, and Tribal TANF recipients are subject to maximum time limits for the receipt of assistance as well as penalties for failure to meet program requirements. While these requirements are specified in PRWORA for State TANF programs, we will establish these for each Tribal program with Tribal input. Although the proposed rules suggest flexibility in how these requirements are established, we believe that it is important for us to lay out, in regulations, the criteria that we propose to use.

Although Tribes that operate TANF programs are subject to some of the same statutory requirements as are States, there are some requirements that do not apply to Tribes, such as the prohibitions in section 408. At the same time, the statute provides options to States such as the option to exempt families from applicable time limits due to hardship, that we propose to make available to Tribes, unless precluded by other legal authority. Thus, since the statute does not treat Tribes and States in the same way, we believe the Tribal TANF regulations should reflect this.

C. Accountability for Meeting Program Requirements and Goals

The new law gives Tribes flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, it reflects a commitment to ensuring that the goals of welfare reform are met. To this end, the statutory provisions on data collection and penalties are crucial because they give us the authority we need to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

While we have proposed rules on data collection and reporting requirements for State TANF programs, this Notice of Proposed Rulemaking lays down our proposal specific to the Tribal programs. This is because the Tribal TANF programs will not be subject to the final rules for the State TANF programs. Thus, we need to ensure that there is a clear understanding of the data collection and reporting requirements as they apply to Tribes.

IV. Discussion of Individual Regulatory Provisions

The following is a discussion of all the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

A. PART 286—TRIBAL TANF PROGRAM PROVISIONS

Subpart A—General Tribal TANF Provisions

What does this part cover? (§ 286.1)

This part contains our proposed rule for the implementation of section 412 of the Social Security Act, except for section 412(a)(2) which is covered in part 287. Section 412 allows federally-recognized Indian tribes, certain specified Alaska Native organizations and Tribal consortia to submit plans for the administration of a Temporary Assistance for Needy Families (TANF) program.

In this proposed rule, we have tried to retain the flexibility provided by the statute to the Tribal Family Assistance program. At the same time, we recognize the need to set forth the general rules that will govern the program.

In addition, in recognition of the unique legal relationship the United States has with Tribal governments, these regulations will be applied in a manner that respects and promotes a government-to-government relationship between Tribal governments and the United States government, Tribal sovereignty, and the realization of Indian self-governance.

In this proposed rule the terms "Tribal Family Assistance program" or "TFAP" and "Tribal TANF program" are used interchangeably.

What definitions apply to this part? (§ 286.5)

This section of the proposed rule includes definitions of the terms used in part 286. Where appropriate, it also includes cross-references which direct the reader to other sections or subparts of the proposed rule for additional information.

In drafting this section of the proposed rule, we chose not to define every term used in the statute and in these proposed regulations. We understand that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs that best serve their needs.

For example, we have not defined "Indian family" or "service population." Each Tribe administering its own Tribal TANF program is permitted by the statute to define its service population. Because funding for the Tribal TANF program is based on State expenditures of Federal funds on Indian families during fiscal year 1994, we believe the Tribal TANF program was intended to serve primarily Indian families. However, in order to provide flexibility to Tribes and States, Tribes may define service population and have the option of including only a portion of the Tribal enrollment, only Tribal members, all Indians, or even non-Indians residing in the service area. It will be up to each Tribe submitting a TANF plan to define the service population that the plan covers. The service population definition provided by a Tribe in turn determines what data the State would be asked to provide to calculate the amount of the Tribal TANF grant. Note that at § 286.65(d)(2) if a Tribe chooses to include non-Indian families in its service population definition, the Tribe is required to demonstrate State agreement with the inclusion of that portion of the Tribe's service population.

We also have not defined the individual work activities that count for the purpose of calculating a Tribe's work participation rate. These are terms the Tribe should define in designing its Tribal TANF program. We believe Tribes should have maximum flexibility to define these terms as appropriate for their program design.

Readers will note that we use the term "we" throughout the regulation and preamble. The term "we" means the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Readers should also note that we use the term "Tribe" throughout the regulation and preamble. The term "Tribe" means federally-recognized Indian tribes, consortia of such Indian tribes, and the 13 entities in the State of Alaska that are eligible to administer a Tribal Family Assistance program, under an approved plan. It also refers to

the Indian tribes and the Alaska Native organizations that are eligible to administer a NEW program because they operated a Tribal JOBS program in fiscal year 1995.

We have provided necessary definitions from PRWORA for the readers' convenience. However, we have chosen not to augment these statutory definitions.

We also have provided clarifying, operational and administrative definitions in the interest of developing a clearer, more coherent and succinct regulation. These include common acronyms and definitions we believe are needed in order to understand the nature and scope of the provisions in this proposed rule. Some of these terms have commonly understood meanings; others are consistent with proposed definitions included in the State TANF NPRM. We advise readers to review all the terms in this section carefully because many of them determine the application of substantive requirements.

Federal requirements related to the expenditures of Federal grant funds necessitate the use of precise definitions. An example of such a definition is that used for the term "administrative costs" which triggers particular Federal grant requirements (see § 286.40).

Assistance. The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places that affect the Tribal TANF program, including: (1) In the numerator and denominator of the work participation rates in section 407(b); and (2) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provision in section 409(a)(1). Thus, it is important that Tribes have a definition of "assistance." For the purposes of the Tribal TANF program, we propose to adopt the same definition of assistance as developed and included in the NPRM for the State TANF program.

Because PRWORA is a block grant, a Tribe may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that were provided previously by the States under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We are proposing to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicates that Congress meant that this term encompass more than cash assistance (H.R. Rep. No. 725, 104 Cong., 2d Sess (1996)). Therefore, as we suggested in our January policy announcement (TANF–ACF–PA–97–1) for State TANF programs, the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition. In brief, the two exclusions were: (1) Services that had no direct monetary value and did not involve direct or indirect income support; and (2) one-time, short-term assistance.

In the proposed rule, we are clarifying that child care, work subsidies, and allowances that cover living expenses for individuals in education or training are included within the definition of assistance. For this purpose, child care includes payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It does not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies include payments to employers to help cover the costs of employment or on-the-job training.

We are also proposing to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we received a number of questions about what the term "one-time, short-term" meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that "short-term" or "one-time" could be defined to encompass many situations where assistance was of a significant and ongoing nature. We believe our proposal will give Tribes the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcome comments on whether the proposed policy achieves this end.

Under the policy announcement and this proposed rule, we define the minimum types of services and benefits that must be included as assistance. Based on comments we received, we considered allowing Tribes to include additional kinds of benefits and services, at their option. However, we were concerned that varying Tribal definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects.

If Tribes expanded their definitions of assistance, they would have to apply that same definition under all provisions of the regulations. Thus, if something fell within the definition of assistance, the family receiving that type of benefit would be subject to work requirements, and Federal time limits; and the family would have to be included in the Tribe's data collection and reporting.

In response to the policy announcement, we received a number of questions about the treatment of TANF assistance under the child support enforcement program. The Office of Child Support Enforcement will issue guidance on the distribution of child collections under PRWORA; this guidance will explain the treatment of TANF assistance under the new distribution rules.

For those concerned about the inclusion of child care in the definition of assistance, we would point out the child care expenditures made under the Child Care Development Fund program are not subject to TANF requirements, including time limits for the receipt of assistance.

As a part of the Tribal TANF Financial Report that is being developed, we will propose to collect data on how much of the program expenditures are being spent on different kinds of "assistance" and "non-assistance." If the data that will be collected show that large portions of the program resources are being spent on "non-assistance," we would have concerns that the flexibility in our definition of "assistance" is undermining the goals of the legislation. We would then look more closely at the "non-assistance" being provided and try to assess whether work requirements, time limits and case-record data would be appropriate for those cases. If necessary, we would consider a change to the definition of "assistance" or other remedies.

While our definition excludes some forms of support as "assistance," the exclusions do not apply to the eligible Alaska Tribal entities and the State of Alaska in determining whether the Alaska Tribal entities' Tribal TANF programs are comparable to Alaska's State TANF program. For example, an Alaska Tribal entity that implements a Tribal TANF program may choose to include "direct services" as part of their benefit level definition, and these "direct services" would trigger the TANF requirements, i.e., work requirements, time limits, and data

collection and reporting. Please refer to § 286.150 for more information on the Alaska comparability requirement.

Finally, we would like to note that § 286.5 contains a definition of "administrative costs." This definition is important because we are proposing, at § 286.40, to limit to 20 percent the amount of Tribal TANF funds that a Tribe may use for administrative costs.

Who is eligible to operate a Tribal TANF program? (§ 286.10)

This section of the proposed rule specifies which Indian tribes are eligible to submit Tribal Family Assistance Plans (TFAPs).

In general, any federally-recognized Indian tribe is eligible to submit a Tribal Family Assistance Plan. However, with respect to the State of Alaska, only the 12 Alaska Native regional nonprofit corporations specified at section 419 of the Act, plus the Metlakatla Indian Community of the Annette Islands Reserve may submit a TFAP.

In addition, a consortium of eligible Indian tribes may develop and submit a single TFAP.

Subpart B—Tribal TANF Funding

How is the amount of a Tribal Family Assistance Grant determined? (§ 286.15)

How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant? (§ 286.20)

We have combined the discussions for these two sections of the proposed rule because they are interrelated. These sections of the proposed rule discuss how the amount of a Tribal Family Assistance Grant (TFAG) will be determined and the actions we believe will be necessary to resolve disagreements over the data received from a State.

PRWORA requires the Secretary to pay TFAGs to federally-recognized Indian tribes with approved 3-year Tribal Family Assistance Plans. To determine the amount of a TFAG, we must use data submitted by the State or States in which the Indian tribe is located. Section 412(a)(1)(B) specifies the data that we will use. The statute provides that, for each fiscal year 1997–2002, an Indian tribe that has an approved Tribal Family Assistance Plan will receive an amount equal to the Federal share (including administrative expenditures, which would include systems costs) of all expenditures (other than child care expenditures) by the State or States under the AFDC and Emergency Assistance (title IV–A) programs, and the JOBS (title IV–F) program for fiscal year (FY) 1994 for Indian families residing in the service area(s) identified in the Tribal Family Assistance Plan. For Tribes that operated a Tribal JOBS program in FY 1994, the State title IV–F expenditures (including administrative costs) used in the calculation of the TFAG would be for expenditures made by the State on behalf of non-member Indians and non-Indians, if either or both are included in the Tribal TANF population and are living in the designated Tribal TANF service area(s). Any expenditures by the State for Tribal members who were served by the State JOBS program will also be included in the determination.

Section 412(a)(1)(B)(ii)(II) of the statute allows Tribes the opportunity to disagree with State-submitted data and to submit additional information relevant to our determination of the TFAG amount. We believe Tribes should have an opportunity to submit relevant information in instances in which the State has failed to submit requested data on a timely basis. However, we believe the lack of State-submitted data will be a very rare occurrence.

We will request State data based on the Tribe's identified service area and population, which may include areas outside the reservation and non-Indian families. We will allow States 21 days from the date of our request to submit the requested data before notifying the affected Tribe of its option under section 412(a)(1)(B)(ii)(II) of PRWORA to submit its own data. This time frame should allow States adequate time to gather and submit the data. However, in order for us to notify the State of any reduction in its grant not later than three months before payment of any quarterly installment, as specified by section 405(b), we will use the best available data to determine the amount of the TFAG, if the State has not submitted the specified data at the end of the 21-day period. Our experience to date has shown that we need time to resolve any issues related to determining the amount of a TFAG in order to meet the statutory requirement for notification to the State of the reduction in the amount of their State TANF grant.

We also believe a Tribe should have a reasonable period of time in which to review the State-submitted data and make a determination as to whether or not it concurs with the data. We have determined that a twenty-one (21) day period should be sufficient for this activity. Therefore, we propose to allow a Tribe 21 days from when it receives the State-submitted data from us to notify us of its concurrence or non-concurrence with the data.

Once we receive State data, we will share it with the Tribe. We will also facilitate any meeting or discussions between the Tribe and the State to answer any questions the Tribe has about the submitted data. Any meetings or discussions to answer the Tribe's questions about the data need to be held within the proposed 21-day period for Tribal concurrence. We believe it is in the best interests of both the Tribe and the State to reach a consensus on the State data. However, if the Tribe finds it cannot concur with the State data and has notified us to this effect, we will provide the Tribe an additional 21 days to submit additional relevant information. It will then be our responsibility under section 412(a)(1)(B)(ii)(II) to make the final determination as to the amount of the TFAG after review of the information submitted by the Tribe.

In instances in which the State has not submitted the requested data within the time period given, we will notify the Tribe. We will give the Tribe 21 days from the date of our notification to submit relevant data. This 21-day time frame is the same time frame we have proposed for Tribes to submit information if they disagree with State-submitted data. In the absence of State-submitted data, we propose to use relevant Tribe-submitted data to determine the amount of the TFAG.

If a Tribe disagrees with the data submitted by the State, we will use the State-submitted data and any additional relevant information submitted by the Tribe to determine the amount of the TFAG. Relevant Tribal data may include, but are not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and tribal records.

Once the amount of the TFAG is officially determined, we will notify both the Tribe and the State of the Secretary's decision. Our goal will be to resolve any data issues at least two weeks prior to when we are required to notify the State. We will make official notification of the amount of the State Family Assistance Grant reduction to the appropriate State(s) no later than 90 days before the payment of the State's next quarterly SFAG installment.

What is the process for retrocession of a Tribal Family Assistance Grant? (§ 286.25)

As defined at § 286.5, retrocession is a voluntary termination of a Tribal TANF program. Section 412 of the Act does not include a provision for retrocession. However, we recognize that Tribes voluntarily implement a TANF program for their needy families and should, therefore, be afforded the opportunity to withdraw their agreement to operate the program. For

example, a Tribe may lose a State's commitment to provide State funds for Tribal TANF, which could significantly impact the Tribe's financial ability to operate the program. Based on overwhelming support and comments by both Tribes and States, we determined the necessity of a retrocession provision in these regulations.

In providing for the retrocession of a Tribal TANF program, we recognize several needs. Thus, the proposed specified time frame is intended to ensure that: (1) There is minimal disruption of services to families in need of assistance; (2) a Tribe makes an informed decision in determining whether or not to cease operating the Tribal TANF program; and (3) a State is provided adequate notice to ensure continuity of program services.

A Tribe that decides to terminate its Tribal TANF program must notify the Secretary in writing of its decision and the reason(s) for retrocession at least 120 days prior to the effective date of the termination. The effective date must coincide with the end of the grant period (i.e., September 30). This deadline reflects our intention to notify the State no later than 90 days prior to the effective date of the termination. We believe this will give the State ample time to implement services for the families who had been served by the Tribal TANF program.

For Tribes that retrocede, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant. The Tribe must return all unobligated funds to the Federal government. The appropriate SFAG will be increased by the amount of the TFAG.

Tribes that retrocede the program may be eligible to operate a Tribal TANF program at a later date. However, in the proposed rule we state that we will not approve another TFAP until the Tribe can demonstrate that the reasons for the earlier retrocession no longer exist and that all outstanding penalty amounts have been repaid. We will not return the TANF program to the Tribe unless and until we are certain that it has resolved any outstanding problems.

A Tribe that retrocedes a Tribal TANF program is responsible for complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective. In addition, the Tribe is liable for any applicable penalties (see subpart D); and it is subject to the provisions of 45 CFR part 92 and OMB Circulars A–87 and A–133, and other Federal statutes and regulations applicable to the TANF program. The Tribe also will be responsible for any penalties resulting from audits covering the period up to the effective date of retrocession. Please refer to § 286.170 for the discussion on penalties.

What are proper uses of Tribal Family Assistance Grant funds? (§ 286.30)

Section 412 of the Act does not specify the particular purposes for which a TFAG may be used. However, under these proposed rules any such use must be consistent with section 401(a) of the Act. We believe the Tribes should have the same flexibility as the States in their use of TANF funds. Therefore, we propose at § 286.30 that the Tribal TANF grantees will be able to use their TFAGs for the same purposes as States may use their TANF funds as specified in section 404(a) of the Act.

Thus, a Tribe may use its TFAG in any reasonable manner to accomplish the purposes of part A of title IV of the Act. This may include the provision of low-income households with assistance in meeting home heating and cooling costs. In addition, we believe that Tribes should be able to use their TFAGs in any manner that was an authorized use of funds under the AFDC and JOBS programs, as those programs were in effect on September 30, 1995.

In determining whether a welfare-related service or activity may be funded with its TFAG, a Tribe should refer to the purposes of TANF, as described in section 401 of the Act, as well as to section 404(a). Tribes should be aware that TANF funds may be used only for welfare-related services or activities reasonably calculated to accomplish the purposes of part IV-A of the Act. TANF funds are not authorized to be used to contribute to or otherwise support non-TANF programs. Use of TANF funds to support non-TANF programs or other unauthorized purpose shall give rise to penalties under section 409(a)(1) of the Act (made applicable to Tribes by section 412(g).

What uses of Tribal Family Assistance Grant funds are improper? (§ 286.35)

Just as section 412 of the Act does not specify the particular purposes for which Tribal Family Assistance Grant funds may be used, it does not specify any prohibitions or restrictions on the use of TFAG funds in a Tribal TANF program. As we are proposing rules for the uses of Tribal Family Assistance Grants, we believe it is important to indicate in this proposed rule what would not be a proper use of a TFAG. Section 401 of the Act makes clear that TFAG funds are restricted to the operation and administration of the TANF program. Tribal TFAG funds may not be used to contribute to or to subsidize non-TANF programs. Any use of TFAG funds to contribute to or otherwise support non-TANF programs will be considered an improper use of TANF funds and subject to penalties under § 286.170.

We propose to restrict the use of a TFAG to providing welfare-related services and assistance to families that include either a minor child who resides with a custodial parent or other adult caretaker relative of the child or a pregnant individual. In addition, we propose that a TFAG may be used to provide welfare-related services or assistance for no more than the number of months specified in a Tribe's approved TFAP.

OMB Circular A–87 includes restrictions and prohibitions that limit the use of a TFAG. In addition, all provisions in 45 CFR part 92 and OMB Circular A–133 apply to the Tribal TANF program. TANF is not one of the Block Grant programs exempt from the requirement of part 92 because OMB has determined that TANF should be subject to part 92.

Non-Citizens

Title IV of PRWORA establishes restrictions on the use of TANF funds to provide assistance to certain individuals who are not citizens of the United States. These restrictions are part of the definition of eligible family at § 286.5. Individuals who do not meet the criteria at § 286.5 may not receive TANF assistance paid with Tribal Family Assistance Grant funds.

Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting such use. Since the statute is silent on this, a Tribe may not use its TFAG for construction or for the purchase of facilities or buildings.

Program Income

We have received inquiries as to whether TANF funds may be used to generate program income. An example of program income is the income a Tribe earns if it sells a product (e.g., a software program) developed, in whole or mostly with TANF funds.

Tribes may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how this program income may be treated. To give Tribes flexibility in the use of TFAGs, we are proposing to permit Tribes to add to their Tribal Family Assistance Grant program income that has been earned by the Tribe. Tribes must use such program

income for the purposes of the TANF program and for allowable TANF services, activities and assistance. We will not require Tribes to report on the amount of program income earned, but they must keep on file financial records on program income earned and the purposes for which it is used in the event of an audit or review.

Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs? § 286.40

Under section 404(b) of the Act no more than 15 percent of a State's SFAG may be spent on administrative expenditures. Expenditures by a State for information technology and computerization needed for tracking or monitoring cases covered by the TANF program are excluded from the 15 percent limit. Because section 404(b) is not applicable to Tribal TANF programs, we asked in our discussions with Tribes and States, what limit, if any, should be placed on administrative expenditures under the Tribal TANF program. Many respondents indicated that a limit on administrative expenditures should not be applied to Tribal TANF programs. Other respondents indicated that Tribes do not have the same level of experience in operating this kind of welfare program as do States, and, that if a limit had to be set, any limit should be higher than the State TANF limit. Respondents also cited both the additional start-up expenses that Tribes will experience and the new requirements of the TANF program as a reason to set a higher limit for Tribal TANF programs.

In our deliberations on whether to propose a limit on administrative expenditures, we considered various options. One was to follow the statute and be silent on the issue. The second option was to apply the same limit placed on States. The third option was to set a limit that recognizes the special needs of Tribes mentioned above. In whatever option we choose, we felt it necessary to ensure that most of a Tribal TANF grant would be available to carry out the primary objective of the TANF statute.

We understand the reason why many of the respondents said that an administrative expenditure limit should not be placed on Tribal TANF programs. However, not placing a limit could result in depriving needy families of the program benefits Congress intended families to receive. We believe setting a limit on administrative expenditures is more consistent with the purposes of the Act. Placing a limit on administrative expenditures guarantees that the major portion of a Tribal TANF grant goes to assisting needy families.

We will respond to the fact that Tribes do not have the same level of experience operating welfare programs as do the States. In addition, we want to recognize that Tribes will need to expend a larger portion of their grant funds on administration than States because they cannot take advantage of economies of scale. Therefore, at § 286.40 we propose to limit Tribal TANF administrative expenditures during any grant period to 20 percent of a Tribal TANF grant. Thus, each Tribal TANF grantee will be required to expend at least 80 percent of its grant on direct program services (and technology) during the grant period.

Because expenditures for information technology and computerization needed for tracking and monitoring of cases under the TANF program by the States will be excluded from the administrative expenditure limit, these same expenditures by Tribes will also be excluded from the Tribal limit.

If a Tribe's administrative costs exceed the 20 percent limit, the penalty for misuse of funds (refer to § 286.170) will apply. The penalty will be the amount spent on administrative costs in excess of 20 percent. We will take an additional penalty in the amount of 5 percent of the adjusted TFAG if we find that a Tribe has intentionally exceeded the 20 percent limit.

Tribes must allocate costs to proper programs. Under the Federal Appropriations Law, grantees must use funds in accordance with the purpose for which they were appropriated. In addition, as stated previously, the grants administration regulations at part 92, and OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments", apply to the TANF program. OMB Circular A–87, in particular, establishes the procedures and rules applicable to the allocation of costs among programs and the allowability of costs under Federal grant programs such as TANF.

What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grants? (§ 286.45)

Of particular interest to our Tribal partners and other interested parties will be the definition of the costs that are included as administrative costs because of the proposed rule at § 286.40 that places a limit on administrative expenditures. In the development of the NPRM for the State TANF program, we consulted with State and local representatives and other parties and organizations on the extent to which we should define administrative costs.

Just as with the State TANF program, we considered not proposing a Federal definition. That option had appeal because: (1) It is consistent with the philosophy of a block grant; (2) we took a similar approach in some other policy areas (i.e., in not defining individual work activities); (3) we support the idea that we should focus on outcomes, rather than process; and (4) the same definition might not work for each Tribe. Also, we were concerned we could exacerbate consistency problems if we created a Federal definition. Because of the wide variety of definitions in other related Federal programs, adoption of a single national definition could create variances in operational procedures within Tribal agencies and add to the complexities administrators would face in operating these programs.

At the same time, we were hesitant to defer totally to Tribal definitions. The philosophy underlying this provision is very important; in the interest of protecting needy families and children, it is critical that the substantial majority of Federal TANF funds go towards helping needy families. If we did not provide some definition, it would be impossible to ensure that the limit had meaning. Also, we felt that it would be better to give general guidance to Tribes than to get into disputes with individual Tribes about whether their definitions represented a "reasonable interpretation of the statute."

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain Tribal choices on how they deliver services. We believe a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

The definition we have proposed does not directly address case management or eligibility determination. We understand that, especially for Tribal programs, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities can be treated as administrative costs. However, to the extent that a worker's time is spent on case-management functions or delivering services to clients, that

portion of the worker's time can be charged as program costs.

We believe that the definition we have proposed will not create a significant new administrative burden on Tribes. We believe that it is flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among Tribal TANF programs. It also has the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the Tribe and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available "off-the-shelf" to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcome comments on how to deal with this latter dilemma, as well as comments on our overall approach to the definition of administrative costs.

Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded? (§ 286.50)

Section 404(e) of the statute does not apply to Tribal TANF or NEW programs. Section 404(e) allows States to reserve amounts paid to the State for any fiscal year for the purpose of providing TANF assistance without fiscal year limitation. Section 412 is silent on an obligation period for Tribal TANF or NEW program funds. However, Federal Appropriations Law (at 31 U.S.C. 1301(c)) states "An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation— (1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or (2) expressly provides that it is available after the fiscal year covered by the law in which it appears." This statutory provision precludes us granting to Tribes the authority to reserve TFAGs grants paid to them without fiscal year limitation. Therefore, Tribes must obligate their TFAGs by the end of the fiscal year in which they are awarded. In accordance with the authority granted to us by 45 CFR 92.23(b), we propose to extend to 12 months the period of time when unliquidated obligations must be liquidated by Tribes.

Subpart C—Tribal TANF Plan Content and Processing

How can a Tribe apply to administer a Tribal TANF program? (§ 286.55)

Any eligible Indian tribe or Alaska Native regional non-profit corporation or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year Tribal Family Assistance Plan to the Secretary of the Department of Health and Human Services. This requirement extends to those Tribes that are operating a Pub. L. 102–477 employment and training program (please refer to § 286.140 for information on this).

Who submits a Tribal Family Assistance Plan? (§ 286.60)

The chief executive officer of the Tribe, eligible Alaska Tribal entity, or Tribal consortium must sign and submit the TFAP. This is generally the Tribal Chairperson. The TFAP must also be accompanied by a Tribal resolution indicating Tribal Council support for the proposed Tribal TANF program. In the case of a Tribal consortium, the TFAP must be accompanied by Tribal resolutions from all members of the consortium. These Tribal Council resolutions must demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving relationships between the Tribal TANF consortia and the State and/or Federal government on TANF matters are the express responsibility of the consortium's governing board.

We recognize that changes in the leadership of a Tribe or some other event may cause a participating Tribe to rethink its participation in the consortium and/or in Tribal TANF. If, for example, a subsequently elected Council decided to terminate participation in the consortium and in TANF, that decision might create a need for time to reintegrate a Tribal program or a part of the Tribal program into the State program. Thus, we propose at § 286.60(c) that, when one of the participating Tribes in a consortium wishes to withdraw from the consortium for purposes of either withdrawing from Tribal TANF altogether or to operate its own Tribal TANF program, that the Tribe needs to notify both the consortium and us of this fact at least 120 days prior to the planned effective date. This notification time frame is especially applicable if the Tribe was withdrawing from Tribal TANF altogether and the Tribe's withdrawal will cause a change to the service area or population of the consortium.

A Tribe withdrawing from a consortium for purposes of operating its own program must, in addition to the notification specified in the previous paragraph, submit its own Tribal TANF plan that meets the plan requirements at § 286.65 and the time frames specified at § 286.140.

What must be included in the Tribal Family Assistance Plan? (§ 286.65)

The TANF program concerns work, responsibility, and self-sufficiency for families. To that end, section 412(b) of the Act lists six features of a Tribal Family Assistance Plan.

Approach to Providing Welfare-Related Services

The TFAP must outline the Tribe's strategy for providing welfare-related services. The Act does not specify what this outline must entail; however, we believe it is important that it includes information necessary for anyone to understand what services will be provided and to whom the services will be provided.

To that end, we propose that the Tribal Family Assistance Plan must include, but is not limited to, information such as general eligibility criteria and special populations to be served, a description of the assistance and services to be offered, and the means by which they will be offered using TANF funds.

The description of general eligibility requirements consists of the Tribe's definition of "eligible family," including income and resource limits that make a family "needy," and the Tribe's definition of "Tribal member family" or "Indian family". The description of the services and

assistance to be provided includes whether the Tribe will provide cash assistance, and what other assistance and services will be provided.

The PRWORA discusses a variety of special populations who can benefit from a TANF Program. While the statute does not require a Tribal TANF program to provide specific or targeted services to these populations, if the Tribe opts to do so, it must include a discussion of those services in the TFAP. For example, teen parents without a secondary degree are a special target population for State TANF-related services. If a Tribe wants to provide specific services to teen parents, it needs to describe the specific services in the plan.

We are proposing to require information in the Tribal TANF plan regarding whether services will be provided to families who are transitioning off TANF assistance due to employment. Section 411(a)(5) requires Tribes to report, on a quarterly basis, the total amount of TANF funds expended to provide transitional services to families that have ceased to receive assistance because of employment, along with a description of such services. Therefore, we believe it prudent for ACF and the public to know whether the Tribe's TANF program provides transitional services and, if so, what types of services will be offered.

Questions have been raised about the potential dual eligibility of Indians for State and Tribal TANF programs. It is the position of the Department that section 417 of the Act precludes our regulating the conduct of States in this area. Nonetheless, we note that the issue of the dual eligibility of Indians raises constitutional concerns about the denial of state citizenship rights under the fourteenth amendment. We also note that, under section 408(c) of the Act, State TANF programs are subject to title VI of the Civil Rights Act of 1964 and certain other Federal non-discrimination provisions.

As TANF focuses on outcomes, we believe a TFAP needs to identify the Tribe's goals for its TANF program and indicate how it will measure progress towards those goals. We believe this will help focus efforts on achieving positive outcomes for families. Progress can be measured longitudinally over time or over the short term, but should be clearly targeted on those being served by the Tribal TANF program. For example: The incidence of teen pregnancy will be reduced by approximately X % over the three-year period of the TFAP, or educational achievement by teen parents receiving TANF assistance will experience an overall gain of at least one grade level over the three year-period of the TFAP.

Sections 402(a)(4)(A) and (B) of the Act require States to certify that local governments and private sector organizations have been consulted regarding the State TANF plan and design of welfare services and have had at least 45 days to submit comments on the plan. We propose similar requirements as part of the Tribal TANF plan process. We propose a public comment period as a means of soliciting input into the design of the Tribal TANF program and providing a means through which Tribes may design a program which truly meets the community's needs. This public comment period should afford affected parties the opportunity to review and comment on a Tribe's TFAP. While the Act does not specifically require Tribes to conduct a public comment period prior to submission of the TFAP, previous experience demonstrates the value of such a comment period towards tailoring the program to meet the individual circumstances of those who will be affected by the program and its far-reaching impact on Tribal children and families. Furthermore, we discern Congressional recognition in the Act of the value of public comment on the content of TANF plans and the design of welfare services. We believe that this is equally applicable to Tribal TANF plans.

Finally, it is important that individuals who apply for and/or receive TANF are afforded due process should the Tribe take an adverse action against them. Therefore, the TFAP must include an assurance that the Tribe has developed a specific TANF dispute resolution process. This process must be used when individuals or families dispute the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

Child Support Enforcement

Just as the enactment of PRWORA created opportunities for Tribes to operate their own TANF programs, it provided new opportunities to ensure that Tribal families receive child support from responsible parents. The relationship between TANF and child support enforcement programs is important, regardless of whether the State or Tribe operates one or both of these programs. In addition, the relationship between self-sufficiency and child support becomes extremely important for TANF families because of the time-limited nature of TANF assistance.

Under PRWORA, in order to receive a TANF block grant, a State must certify that it operates a child support enforcement program meeting requirements under title IV–D of the Act. A State child support enforcement program must provide the following services to TANF and former TANF recipients and to others who apply for services: Location of parents, establishment of paternity and support orders and enforcement of orders. In order to receive TANF assistance from a State, a TANF applicant or recipient must assign any rights to support to the State and cooperate with the child support enforcement program in establishing paternity and securing support. Collections of assigned support are used to reduce State and Federal costs of the TANF program.

PRWORA does not place similar requirements on Tribes or families receiving Tribal TANF assistance. Tribes are not required to certify that they are operating a child support enforcement program as a condition of receiving a Tribal TANF grant. Nor is there any requirement that Tribal TANF applicants and recipients assign all rights to support as a condition of receipt of Tribal TANF. There are, therefore, no penalties to the Tribe for failing to operate a child support enforcement program nor to a Tribal TANF recipient for failing to cooperate with child support efforts. However, several Tribes with approved Tribal TANF plans are requiring Tribal TANF recipients to cooperate with child support efforts.

Prior to enactment of PRWORA, title IV–D of the Act placed responsibility for the delivery of child support enforcement services with the States. Consequently, States have attempted to provide child support services on Tribal lands but have generally been constrained in their abilities to establish paternity, or establish or enforce child support orders with respect to noncustodial parents who reside within the jurisdiction of a Tribe because of sovereignty and jurisdictional issues. Therefore, arrangements for child support services on Tribal lands may involve a specific agreement to recognize State or county jurisdiction on Tribal lands for the narrow purpose of child support enforcement. In such agreements, Tribes agree to allow the child support agency to extend State program procedures to the reservation. Alternatively, some States and Tribes have entered into cooperative agreements under which a Tribal entity provides child support services on Tribal lands and receives funding from the State.

Under PRWORA, requirements for State/Tribal cooperative agreements, as

well as direct Federal funding of Tribes for operating child support enforcement programs, were addressed for the first time in title IV-D of the Act. Section 5546 of the Balanced Budget Act of 1997 made technical amendments to the cooperative agreements language in section 454(33) of the Act and to direct funding of Tribal child support enforcement programs under section 455(f) of the Act.

Issues relating to responsibilities for providing child support enforcement services for Tribal TANF assistance cases and distribution of support collections in such cases have already been raised in several States and Tribes must work together to determine how Tribal TANF and State child support programs will work best for Tribal families. More than ever before, this collaboration is critical.

Since child support is a critical component of self-sufficiency for many single parent families, Tribes need to determine whether they want to condition a family's eligibility for Tribal TANF assistance on cooperation with the State child support enforcement program. If the Tribe will so condition eligibility, the TFAP should so specify.

Tribes that have entered into, or will enter into, cooperative agreements with their States on child support matters have decided that child support is a critical issue for families Likewise, Tribes that will decide, after regulations have been issued, to operate their own child support enforcement programs know the importance of child support. We invite comments from readers as to whether Tribes should be required to condition Tribal TANF eligibility on cooperation with child support enforcement efforts if they either operate their own child support enforcement programs or have cooperative agreements with their States.

Provision of Services

As required by section 412(b)(1)(B), the TFAP must indicate whether the welfare-related services provided under this plan will be provided by the Indian tribe or through agreements, contracts or compacts with inter-Tribal consortia, States, or other entities. The Tribe determines which Tribal agency will have the lead responsibility for the overall administration of the Tribal TANF program. The designated lead agency plans, directs and operates the Tribal TANF Program on behalf of the Tribe. While it has the flexibility to contract many portions of the Tribal TANF program with public and/or private entities, the lead agency must maintain overall administrative control of the program. The lead agency is required to administer the Tribal TANF plans, submit the Tribal TANF Family Assistance Plan, coordinate Tribal TANF services with other Tribal and State programs, and collect and submit required data. Although not required by statute, we are proposing at § 286.65(b) to require Tribes to identify the lead agency in the TFAP because of its importance in the overall administration of and responsibility for the Tribal TANF program. The plan must also include a description of the administrative structure for supervision of the Tribal TANF program, including the designated unit responsible for the program and its location within the Tribal government.

For lead agencies that wish to enter into agreements or contracts with other entities, the TFAP needs to specify how the welfare-related services will be provided, e.g., through sub-contracts. In the instance of Tribal consortia, the lead agency fulfills the same responsibility as the designated unit discussed above.

Population/Service Area

Section 412(b)(1)(C) requires that a TFAP identify the population and service area or areas to be served by the plan. Yet the statute defines neither of these terms.

In our consultation with Tribes on how service area and population should be defined, we heard from Tribes that they should be given flexibility to define their own Tribal TANF service area and population. We have also heard that, at least in the case of Oklahoma, we might expect disagreements between Tribes to arise if service area parameters were not established for Tribes in that State. This concern is due to the fact that none of the Tribes in Oklahoma, except for one, have reservations. Our intent in this proposed rule is to balance Tribal flexibility with the need to afford consideration to Tribes who disagree with another Tribe's proposed service area or population.

Therefore, with regards to service population, Tribes have the flexibility to decide whether their TFAP will serve all Indian families within the service area or solely the enrolled members of the Tribe. A Tribe would convey its decision in the TFAP. If the TFAP provides for services to all Indian families within the service area, then the Tribe agrees to provide such services. If the TFAP provides for services solely to families of enrolled members of the Tribe, then the Tribe does not agree to provide services to the families of non-enrolled Indians residing in the service area of the Tribe.

Regardless of the decision reached by the Tribe in this matter, the responsibility for TANF services to non-Indian families in the Tribal service area resides with the State TANF program, unless the Tribe has negotiated an agreement with the State to allow the Tribe to serve non-Indian families within the Tribal service area. If such an agreement has been reached, the Tribe must include a copy of the agreement or other such documentation of State concurrence, such as a letter from the State, with the TFAP.

There may be various reasons why both a Tribe and the State would want the Tribe to provide TANF assistance to all needy families in its service area (for example, there are very few non-Indian families in the service area). We believe this flexibility to allow a Tribe to include non-Indians in its service population, with State agreement, benefits both Tribes and States.

In those instances where non-enrolled Indians or non-Indians are served by the Tribal TANF Program, the Tribal TANF program is the final authority on the services to be provided. The non-enrolled member's Tribe or the State(s) cannot decide on the nature of the services to be provided by the Tribal TANF program.

With regards to service area, a Tribal TANF service area could include the Tribe's reservation or just portions of the reservation. It could also include "near reservation areas" meeting BIA requirements as outlined at 25 CFR 20.1(r). For Tribes without land bases, the service area could include all or part of the Tribe's service area as defined by BIA.

In the case of claimed service areas extending beyond the Tribe's "near reservation area" or BIA-defined service area, we are concerned about possible complications resulting from misunderstandings on the scope of the service area. Therefore, if a Tribe claims an alternative service area, the TFAP should clearly define the demographic extent of such areas and include a memorandum of understanding with the appropriate State(s) agency or Tribal government reflecting State(s) or Tribal agreement to the servicing of the Tribal TANF service population by the Tribal TANF Program in the extended area.

Likewise, for Tribes in Oklahoma, if the Tribe defines its service area as other than just its "tribal jurisdiction statistical area" (TJSA), the Tribe must include an agreement with the appropriate Tribal government reflecting that Tribe's agreement to the service area. TJSAs are areas delineated for each federally-recognized Tribe in

Oklahoma without a reservation by the Census Bureau.

Duplicative Assistance

Section 412(b)(1)(D) indicates that an individual receiving assistance from a Tribal TANF program may not receive assistance from another State or Tribal TANF program for the same purpose. The TFAP must contain an assurance that families receiving assistance under the Tribal TANF plan will not receive duplicative services under any other State or Tribal TANF plan. The Tribe must develop a process to ensure that duplication does not occur and must include a description of that process in the TFAP. We believe any process the Tribe develops should include a mutual information exchange between the Tribe and State(s) and other nearby Tribal TANF grantees.

Employment Opportunities

Section 412(b)(1)(E) requires that Tribes identify in their TFAPs the employment opportunities in and near the service area or areas of the Indian tribe. Section 286.65(g) of the proposed rule reiterates this requirement. The employment opportunities within and near the Tribal TANF service area will greatly impact the service population's ability to obtain and maintain employment. In designing the Tribal TANF program, Tribes should consider current unemployment rates, public and private sector employment opportunities, and education and training resources. These factors should provide a basis for the Tribe's proposed work activities, work participation requirements, penalties against individuals, and time limits.

Section 412(b)(1)(D) also requires that TFAPs identify the manner in which the Indian tribe will cooperate and participate in enhancing employment opportunities for TANF recipients consistent with any applicable State standards. At § 286.65(g)(2) we reiterate the statutory requirement that the TFAPs describe how the Tribe will enhance employment opportunities for their TANF recipients. Tribes should consider the best means by which they can work with other Tribal or State agencies, and other private and public sector entities on or near the reservation, to enhance employment opportunities. These efforts may be through memoranda of understanding or other public-private partnerships. These activities should also be consistent with any State employment standards (for example, a State minimum wage requirement).

Fiscal Accountability

As required by section 412(b)(1)(F), the TFAP must provide an assurance that the Tribe applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

Establishing Minimum Work Participation Requirements, Time Limits for the Receipt of Welfare-Related Services and Penalties Against Individuals

PRWORA promotes self-sufficiency and independence while holding individuals to a higher standard of personal responsibility for the support of their children than prior law. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988, that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. These goals are reflected in the State TANF provisions requiring individuals to participate in work activities, limiting the number of months that assistance will be provided, and penalizing individuals for failure to participate in work activities as required.

Minimum work participation requirements, time limits for the receipt of assistance and penalties against individuals who refuse to participate in work activities as required are explicitly stated for the State TANF programs in the statute. For the Tribal TANF programs, these three components are not specified. Instead, section 412(c) of the Act provides that for each Tribal TANF grantee Tribal TANF minimum work participation requirements, time limits for the receipt of welfare-related services, and penalties against individuals are to be established by the Secretary with the participation of the Tribes.

The statute further specifies that Tribal TANF work participation requirements and time limits are to be consistent with the purposes of TANF and consistent with the economic conditions and resources available to each Tribe. In addition, penalties against individuals are to be similar to those found in section 407(e) of the statute. However, the statute does not specify a process or procedure to be used to establish minimum work participation requirements, appropriate time limits for the receipt of welfare-related services, and penalties against individuals for each Tribal TANF grantee.

During discussions with Tribes and States as to what process should be used to establish these requirements for each Tribal TANF grantee, many suggested that we use the proposal a Tribe includes in its Tribal TANF plan as the basis for negotiating and establishing these requirements. We agree that it would be prudent to establish these requirements as part of the TANF plan process so that Tribes will know in advance of accepting the TANF program grant the requirements to which they are committing and for which they will be held accountable.

Thus, we propose that each Tribe specify its proposal for minimum work participation requirements, time limits for the receipt of welfare-related services, penalties against individuals who refuse to participate in work activities as required, and related policies in its Tribal TANF plan. In addition, the Tribe must include a rationale for its proposals and related policies in the plan. The rationale should address how the Tribe's proposal is consistent with the purposes of TANF and is consistent with the economic conditions and resources available to the Tribe. In addition, for its proposal for penalties against individuals, the rationale should indicate how they are similar to the requirements applicable to States as specified at section 407(e) of the Act.

Examples of the information that we would expect to be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

We propose to review and evaluate a Tribe's proposal for these components as part of the review and approval process for the entire plan. Additional information or discussion about a Tribe's proposal may be necessary before we approve the plan.

Minimum work participation requirements are further detailed at §§ 286.70–105 of the proposed regulation. The proposed rules at §§ 286.110–120 contain additional information on time limits. Information on penalties against individuals is outlined at §§ 286.125–135.

What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan? (§ 286.70)

As Tribes focus on assisting adults in obtaining work and earning paychecks quickly, parents receiving assistance from a Tribal TANF program are also expected to meet new and more stringent work requirements.

Section 401(a)(2) of the Act states that one of the purposes of TANF is to promote job preparation and work to help needy families become self-sufficient. The statute, at section 407, provides specific individual work participation requirements and participation rate goals to ensure this purpose is carried out under State TANF programs. For State TANF programs, work participation requirements encompass (1) the proportion of TANF families participating in the activities (participation rate targets); (2) the activity level to be required of families, e.g., average number of hours of work per week; (3) the activities that families must be engaged in, e.g., subsidized employment, vocational training, etc.; and (4) exemptions, limitations and special rules related to work requirements.

In providing flexibility in establishing work participation requirements, Congress recognized that Tribal economies and resources will vary and affect a Tribal TANF family's and program's ability to meet the work requirements imposed upon State TANF recipients and State TANF programs. Since the statutory language requires that the work requirements take into consideration the economic conditions and resources available to each Tribe, we cannot establish across-the board minimum work requirements that would be applied to all Tribes. Additionally, written and verbal feedback from Tribes indicated overwhelming support for negotiating on a case-by-case basis with each individual Tribe (as opposed to applying an across-the-board minimum) that will reflect the differences among Tribal economies and resources.

In order to have the information needed to establish minimum work participation requirements for each Tribal grantee, we propose at § 286.70 that each Tribe specify in its TFAP: (1) The targeted participation rates for each of the fiscal years covered by the plan; (2) the minimum number of hours families will be required to participate in work activities for each of the fiscal years covered by the plan; (3) the work activities that count towards the work requirement; (4) any limitations and special rules related to work requirements; and (5) if the targeted rates, the minimum number of required hours, or the work activities are different from those required of State TANF programs, the rationale for the Tribe's proposed work requirements, including how they are consistent with the purposes of TANF and with the economic conditions and resources available to the Tribe.

Considering that many Tribal families reside in remote areas and lack of adequate transportation is a major concern, the proposed regulation at § 286.70(b)(2)(i) allows a Tribe to include reasonable transportation time to and from the activity site in determining the number of hours of participation. Counting transportation time may be indicative of the economic conditions and resources available to a Tribe, and transportation is an economic resource.

Therefore, if a Tribe proposes to count reasonable transportation time towards the minimum number of hours individuals participate, the Tribe's TFAP will need to so specify. The Tribe's definition of "reasonable" would also have to be included in the plan. However, we would also expect Tribes proposing to include reasonable transportation time in determining the number of hours of work participation, to demonstrate that their overall proposal for number of hours is consistent with the purposes of TANF.

As discussed above, the Tribe's rationale for its proposed work participation requirements could include, but is not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

We are proposing not to require an explanation for any element of a Tribe's minimum work participation requirements proposal if a Tribe chooses to adopt the requirements, the limitations or special rules related to work requirements applicable to the State TANF programs. There would be no need for us to negotiate on this element; we would, in these cases, defer to the Tribe's decision to target the requirements/limitations/special rules established for States. However, as noted above, any Tribe proposing to include reasonable transportation time as part of its proposal on minimum hours of participation will have to include a rationale for this decision.

What additional information on minimum work participation rates must be included in a Tribal Family Assistance Plan? (§ 286.75)

We recognize that the statute requires two separate participation rate targets that State TANF programs must meet; one for all families and a separate one for two-parent families. However, the statute pertaining to Tribal TANF programs does not stipulate that there be two separate Tribal TANF participation rates to meet; rather, we interpret the flexibility in negotiating work requirements with Tribes pursuant to section 412(c) of the statute to include whether there should be one or more participation rates. We propose at § 286.70(c)(1) that it will be at the Tribe's option to propose one rate for all families; a rate for all families and two-parent families (the two rates States are subject to); or two separate rates for one-parent families and two-parent families. A Tribe that proposes more than one rate would be held accountable for achieving both rates; failing either could result in the participation rate penalty. A Tribe that proposed only the overall rate would be held accountable for only one. We invite the reader's comments to these proposals.

We have decided not to reiterate in this proposed rule the work participation rates for State TANF programs; Tribes should refer to section 407(a) of the Act for this information. Tribes can use these rates as a guide in determining their own proposal for participation rate targets. The proposed rule at § 286.75(a) requires a rationale from the Tribe if it proposes work participation rates other than those required of State TANF programs.

The proposed regulation at § 286.75(b) suggests, but does not require, that Tribes propose rates that increase over time. While the Act does not specify that rates increase over time, we believe that, consistent with the intent of the statute, increasing rates reflect the need to ensure that increasing numbers of families are progressively engaged in necessary activities before they reach their time limit.

We recognize that many Tribes may not have experience in operating a welfare program that emphasizes placing a significant portion of the caseload into work activities. Consequently, establishing realistic participation rates may initially be a Tribe's "best guess." Additionally, we recognize that resources available to Tribes as well as Tribal economies may change significantly from year to year. We are, therefore, proposing at § 286.75(c) to allow Tribes the opportunity to renegotiate rates in advance of each year's target.

How will we calculate the work participation rates? (§ 286.80)

Similar to the calculations for State participation rates, the proposed regulations at § 286.80 indicate that the yearly participation rate will be the average of the monthly participation rates. Monthly rates, for each rate approved in the Tribe's TANF plan, will be determined by a ratio with the numerator and denominator defined as follows:

Numerator: The number of families receiving assistance (including minor heads-of-household) engaged in work activities as defined in the Tribe's approved TANF plan for the required number of hours.

Denominator: The number of families with an adult or minor head-of-household receiving TANF assistance from the Tribe.

This calculation will be appropriately modified depending upon whether the Tribe chooses to target (1) an all-family rate, (2) an all-family rate and a two-parent rate, or (3) a one-parent rate and a two-parent rate.

We have also made it clear in this proposed rule that a Tribe may count as a month of participation any partial months of assistance, if an adult in the family is engaged in work activities for the minimum average number of hours in each full week that the family receives assistance in that month. These families are already included in the denominator since they are recipients of assistance in that month.

Exclusions From Work Participation Rate Calculations

The PRWORA does not specify exclusions from the participation rate calculations for Tribal TANF programs. However, consistent with the flexibility provided State TANF programs, we are proposing at § 286.80(c)(2) to allow Tribes to exclude from the total number of TANF families (the denominator): (1) those families who have a child under the age of one if the Tribe opts to exempt these families from participating in activities (and so specified in the Tribe's TANF plan); and (2) on a limited basis, those families who are sanctioned for non-compliance.

The statute at section 407(b)(1)(B)(i)(II) precludes States from excluding families sanctioned for non-compliance with the work participation requirements from the denominator if the families have been sanctioned for more than three months out of a twelve-month period. We considered whether to apply the same restriction to Tribal TANF work participation rate calculations. We were concerned that if we did not apply the same restriction and allowed Tribes to exclude sanctioned families indefinitely, then we would be inadvertently encouraging Tribes to discontinue their efforts in bringing those families into compliance and working towards self-sufficiency. Therefore, we are proposing at § 286.80(c)(2)(A) that families sanctioned for non-compliance with the work participation requirements are to be excluded from the denominator only if they have not been sanctioned for more than three months (whether or not consecutively) out of the last twelve months.

The proposed regulations do not provide for any other exclusions in calculating the Tribal TANF participation rate. However, in light of the Secretary's authority to negotiate work participation requirements that reflect economic conditions and resources available to a Tribe, we welcome comments about whether there should be additional exclusions.

We considered whether we should negotiate exclusions from the work participation rate calculations on a case-by-case basis with each individual Tribe. We rejected this approach because we believe a uniform method for calculating Tribal TANF work participation rates will help ensure that penalties are applied equitably across Tribes administering a TANF program. Additionally, since the rates themselves will be negotiated with each individual Tribe, such negotiations will already take into account unique circumstances which may make it difficult for certain families to participate in work activities. However, we welcome comments about whether exclusions should be negotiated on a case-by-case basis.

Two-Parent Families

Section 407(b)(2) of the Act, as amended by the Balanced Budget Act of 1997, requires a State to not consider as a two-parent family a family in which one of the parents is disabled for purposes of the work participation rate. Thus, a two-parent family in which one of the parents is disabled will be treated as a single-parent family for purposes of calculating the work participation rate. We propose at § 286.80(e) to make this provision applicable to Tribal TANF programs as well.

How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate? (§ 286.85)

For Tribal TANF programs the statute does not specify the minimum number of hours individuals must participate in order to be counted for participation rate calculations. The Act gives us the authority to negotiate these requirements with Tribes. The draft regulation at § 286.85 proposes that the minimum average number of hours per week for State TANF families presumptuously applies to Tribal TANF families as well. However, unlike the State requirements, we propose to provide Tribes the opportunity to rebut this presumption. Tribes will be permitted to establish fewer minimally required hours for families if a Tribe provides appropriate justification in its TANF plan. For example, the availability and accessibility of resources may not enable Tribal individuals to participate at the minimum number of hours per week required of State TANF recipients.

What, if any, are the special rules concerning counting work for single custodial parents, caretaker relatives and two-parent families? (§ 286.90)

Section 407(c)(2)(B) of the Act enables States to consider as engaged in work a custodial parent or caretaker relative with a child under age 6, who is the only parent or caretaker relative in the family, if s(he) participates for an average of 20 hours per week. We propose to extend this provision to Tribal TANF programs.

The Balanced Budget Act of 1997 amended section 407(c)(1)(B)(i) of the Act to allow both parents in a two-parent family to share the number of hours required to be considered as engaged in work for purposes of meeting State TANF work requirements. The proposed regulation at § 286.90 indicates that Tribal TANF programs will also be able to apply this policy.

What activities count towards the work participation rate? (§ 286.95)

PRWORA does not specify the work activities required of Tribal TANF recipients but instead authorizes the establishment of minimum work participation requirements, which include work activities, for each Tribal grantee. The overwhelming feedback we received in discussions with Tribes suggested that the work activities identified for States in the statute be considered activities that count toward a Tribal TANF participation rate with two caveats: (1) That they not be limited to those activities; and (2) that they not be further defined in the regulations. Therefore, at § 286.95 we are listing the same activities found at section 407(b) of the Act. In addition, we are providing Tribes further flexibility to identify additional activities that they would consider acceptable and necessary in helping families work towards self-sufficiency. For example, a Tribe may identify subsistence activities or substance abuse treatment as activities the Tribe believes necessary to help families achieve self-sufficiency.

Furthermore, since we are not defining the work activities in the proposed regulations for States, but are instead asking States to define them, we feel it is appropriate to afford Tribes the same definition flexibility.

What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate? (§ 286.100)

Comments we received recommended that Tribal TANF work activities not be subject to the same restrictions on vocational training as are placed on State TANF programs by statute (i.e., not be limited to 12 months). Because Tribal families may have minimal work skills and experience, and Tribal work opportunities may be much more limited, Tribes should have the flexibility to engage Tribal families in more extensive training. Therefore, the proposed regulation at § 286.100(a) does not impose the same limitation that is imposed upon States.

However, with respect to the job search/job readiness limitation required of State TANF programs, we believe that Tribal TANF families should also not simply be asked to job search or participate in job readiness activities as their sole activity for lengthy periods of time. Therefore, the proposed regulation at § 286.100(b) is similar to the provision found at section 407(c)(2)(A)(i) that limits to six weeks in a fiscal year the length of time that a State can consider participation in job search/job readiness in a fiscal year by any individual to be considered engaged in work.

We are also proposing to afford Tribes the option afforded to States that if the unemployment rate in a Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for the fiscal year, then job search and job readiness assistance can be counted for up to twelve weeks during that fiscal year.

However, unlike for State TANF programs, we are proposing at § 286.100(c) that if job search is conducted on an ancillary basis as part of another activity, then time spent in job search activities can count without limitation. We believe that as long as a family is engaging in activities in addition to job searching, then including hours spent in job search as part of their other activities is consistent with the intent of the law, to help families reach their goal of achieving self-sufficiency as soon as possible.

What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers? (§ 286.105)

Section 407(f)(2) of the Act contains two safeguards to ensure that in helping welfare recipients become self-sufficient, we do not jeopardize the economic well-being of non-TANF families through displacement. First, a recipient may not be assigned to a vacant position if the employer has placed other individuals on layoff from the same or equivalent job. Second, an employer may not terminate the employment of any regular employee in order to create a vacancy for the employment of a TANF recipient. We believe these safeguards provide important protection for all workers and need to be in place under both Tribal and State TANF programs. Furthermore, we do not intend for these provisions to preempt or supersede any Tribal laws providing greater protection for employees.

Time Limits

In addition to promoting self-sufficiency and independence through employment, PRWORA stresses the temporary nature of welfare and limits the number of months that assistance can be provided with TANF funds. PRWORA provides a 60-month (or less, at State option) time limit for the receipt of TANF assistance under State TANF programs. The time limit provisions include not only the length of time that assistance can be provided, but also what months of assistance will count toward the time limit and whether any categories of recipients are exempt from the time limit rules. We have the authority, under section 412(c) of the Act, to establish for each Tribe, with the participation of the Tribe, appropriate time limits for receipt of welfare-related services. Once established for each Tribe, the Tribe may not use its TFAG to provide welfare-related services to a family that includes an adult beyond the established time limit.

Section 412(c)(2) of the statute further provides that the time limits established for Tribal TANF programs must be consistent with the purposes of TANF and consistent with the economic conditions and resources available to each Tribe. This principle has been echoed in our on-going consultation with Tribes and Tribal organizations. The comments we have received strongly suggests that the Tribal TANF time limits should reflect the unique circumstances of each service area and service population.

What information on time limits for the receipt of welfare-related service must a Tribe include in its Tribal Family Assistance Plan? (§ 286.110)

As part of its plan, a Tribe will propose a time limit for receipt of Tribal TANF assistance that will apply to its service population and provide a rationale for its proposal. By "time limit," we mean the maximum number of months (whether or not consecutive) that federally funded assistance will be provided to a Tribal TANF family that includes an adult. The proposed time limit should reflect the intent of Congress that welfare should be temporary and not a way of life. The proposal should also take into consideration those factors that may impact on the length of time that a TANF family might be expected to need in order to find employment and become self-sufficient.

To allow for maximum flexibility, we are not requiring that the same time limit apply throughout the Tribal TANF service area. A Tribe should have the option to decide that because economic conditions and the availability and accessibility of services vary, it is appropriate to establish different time limits by geographic area. For example, a Tribe could choose to establish a shorter time limit for a part of the service area that has many employment opportunities than for another part of the service area with high unemployment.

If a Tribe proposes to use the 60-month time limit that applies under State TANF programs, we would not expect a detailed explanation of the rationale. However, if the Tribe proposes to provide assistance for longer than 60 months, it should explain how that time limit was determined. As mentioned earlier, examples of the information that we would expect to be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

As part of the negotiation process, we may ask for additional information and/or further discussion before the proposed time limits are approved. This would ensure that all factors are considered in establishing appropriate time limits for a Tribal TANF program.

Determining if the Time Limit Has Been Exceeded

Section 408(a)(7) of the Act provides that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. In other words, if a family does not include

any adults who are receiving assistance (i.e., only the children receive assistance), then the time limit does not apply. We propose to make the Tribal TANF requirements consistent with the State requirements in this area. The intent of Congress is that families should achieve self-sufficiency through employment. It does not seem reasonable to apply the time limit requirement to cases where only children are receiving assistance, and employment is not an option.

Section 408(a)(7)(B) of the Act requires States to disregard certain months of assistance in determining if the 60-month time limit has been exceeded. Specifically, State TANF programs do not count any month during which a minor who was not head of the household or married to the head of the household received assistance. For the reasons explained below, we propose to apply this disregard provision to Tribes.

The decision as to whether a family has met the time limit is based on how long the adults have received assistance. Therefore, it does not seem reasonable to include months when an individual received assistance as a minor. However, Tribes, like States, would count months when a minor received assistance as the head of a household or as the spouse of the head of the household. The reason is that minor heads of households and minors who are married to heads of household are generally treated as adults in terms of other program requirements under the Act.

Section 407(a)(7)(D) of the Act, as amended by the Balanced Budget Act of 1997, requires that Tribes and States disregard as a month of assistance any month during which an adult lived in Indian country or an Alaskan Native village in which at least 50 percent of the adults were not employed. To determine whether 50 percent of the adults were not employed, the statute allows the use of any reliable data with respect to the month. This would allow the use of the Labor Force Report, which is issued every two years by the Bureau of Indian Affairs, Department of Labor Unemployment Data, or any other reliable data source or combination of data sources.

Can Tribes makes exceptions to the established time limit for families? (§ 286.115)

For State TANF programs, section 408(a)(7)(C) of the Act allows for two hardship exceptions from the 60-month time limit: (1) Families that meet the State's definition of "hardship"; and (2) families that include an individual who has been battered or subjected to extreme cruelty. A State may exempt no more than 20 percent of its average monthly caseload under these exceptions.

Section 412(c) of the Act does not mention a similar exception for Tribal TANF programs. However, because the time limit provisions include not only how long a family may receive Tribal TANF benefits, but also who is subject to the time limits, it is reasonable that Tribes should have the option to provide for similar exceptions from their established time limits. The proposed regulations provide that we will negotiate the maximum percentage of cases in the Tribe's caseload which may be exempted from the established time limits.

Although the proposed regulations include the same definition of "battered or subjected to extreme cruelty" as is set forth in section 408(a)(7)(C)(iii) for State TANF, we request comments as to whether there are additional situations particular to Tribes that should be included in this proposed definition. We also invite comments on whether this exception should be defined in regulations at all or left to each Tribe to define.

Does the receipt of TANF assistance under a State or other Tribal TANF program count towards a Tribe's TANF time limit? (§ 286.120)

Under section 408(a)(7) of the Act, a State must consider receipt of TANF benefits under other State programs in determining if the 60-month time limit has been exceeded. Although section 412 of the Act does not include a similar requirement for Tribal TANF programs, we believe that prior receipt of TANF must also be counted by Tribes when determining if the time limit has been exceeded. We do not believe the intent of Congress was otherwise. Thus, a Tribe must count towards an adult's time limit all prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute or regulation.

Penalties Against Individuals

As stated earlier, the PRWORA promotes self-sufficiency and independence by providing people with more work opportunities while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988, that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As Tribes focus on helping adults get work and earn paychecks quickly, parents are also expected to meet new, tougher work requirements. We will expect Tribes to ensure that parents understand what is required of them, and to develop proposals for penalties against individuals that reflect the importance of those requirements.

What information on penalties against individuals must be included in a Tribal Family Assistance Plan? (§ 286.125)

What is the penalty if an individual refuses to engage in work activities? (§ 286.130)

Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care? (§ 286.135)

This proposed rule combines the discussions of these three sections of this part because of the inter-relationship among them.

As mentioned above, section 412(c) of the Act gives flexibility to establish penalties against individuals, and related policies, for each Tribal TANF grantee. Section 412(c)(3) specifies that penalties against individuals established for each Tribal TANF grantee must be similar to comparable provisions in section 407(e). However, the statute does not specify a process or procedure to accomplish this.

As discussed earlier, we propose to use the Tribal TANF plan process to establish the requirements related to penalties against individuals and related policies that will become a part of the Tribal TANF program. In addition, the Tribe must include a rationale for its proposal and related policies in the plan. The rationale needs to address how the Tribe's proposal is: Consistent with the purposes of section 412 of the Act; consistent with the economic conditions and resources available to the Tribe; and similar to the requirements applicable to States as specified at section 407(e) of the Act.

States are required to reduce the amount of assistance otherwise payable to the family pro rata (or more at State option) for the period during the month in which the individual refused to engage in work as required, subject to good cause and other exceptions determined by the State. The States also are given, by the statute at section 407(e)(1)(B), the option to terminate the case.

In addition, a State may establish, pursuant to section 407(e)(1) of the Act, good cause exceptions to penalties for failure to engage in work as required. We believe that Tribes must also be able to establish reasonable good cause exceptions because penalties against individuals established for each Tribal

TANF grantee must be comparable to those specified at section 407(e). A Tribe must include a rationale for its good cause exceptions. The rationale should address how the good cause exceptions are reasonable and how they relate to the goals of the Tribe's TANF program.

As specified in the statute at section 407(e)(2), a State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in work as required, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

We believe a comparable provision should apply to Tribal TANF programs as the lack of child care may be even more acute on remote Indian reservations.

Under section 402(a)(7) States may opt to establish and enforce standards and procedures for identifying and helping victims of domestic violence. If the State has chosen to establish these standards, it may waive certain program requirements, including work requirements, in cases where compliance would make it more difficult for an individual receiving assistance to escape domestic violence or would unfairly penalize victims or individuals who are at risk of further violence. The State must determine that the individual receiving the program waiver has good cause for failing to comply with the requirements. Tribes may also wish to consider whether to establish their own standards and procedures related to victims of domestic violence.

There may be other reasons a Tribe may want to impose a penalty on an individual who refuses to cooperate with program requirements other than work activity requirements. For example, a Tribe may want to impose a penalty on a custodial parent who refuses to cooperate with a child support enforcement program.

Based on the above information, we believe the Tribe's TANF plan must address the following questions:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family which includes an adult or minor head-of-household that refuses to engage in work as required?

(2) What will be the proposed Tribal policies with respect to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain child care?

(3) What good cause exceptions, if any, does the Tribe propose which will allow individuals to avoid penalties for failure to engage in work activities? What is the rationale for these exceptions?

(4) What other rules governing penalties does the Tribe propose?

(5) What, if any, will be the Tribe's policies in relation to victims of domestic violence?

With respect to the prohibition on penalizing single custodial parents with a child under age 6, we want to underscore the pivotal role of child care in supporting work and that the lack of appropriate, affordable child care can create unacceptable hardships on children and families. To keep families moving toward self-sufficiency, Tribes may want to consider adopting a process or procedure that enables a family to demonstrate its inability to obtain needed child care. Just as States must have policies for continuing benefits to a single-parent family when it demonstrates that it is unable to work due to the lack of child care for a child under the age of six, it is important for Tribes to have policies too. Like States, Tribes should inform eligible parents that the time during which they are excepted from the penalty will count towards the time limit on benefits, unless the Tribe's approved time limit proposal provides for an exception.

The proposed regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by requiring the child care Lead Agency, as part of its consumer education efforts, to inform parents about the penalty exception to the TANF work requirement. It must also provide parents with the information outlined above concerning the process or procedures for demonstrating an inability to obtain needed child care.

Because the Tribe will have the authority to determine whether the individual has adequately demonstrated an inability to obtain needed child care, we expect the Tribe to provide families with the criteria that it will use to implement the exception and the means by which a parent can demonstrate such an inability. In providing these criteria, each Tribe needs to define the following terms: "Appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." In the proposed CCDF rule, we require the Lead Agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the exception to the penalty and to include those definitions and criteria in the CCDF plan.

As the role of child care is pivotal in supporting work activities, it is important for the Tribal and State CCDF programs to coordinate fully with the Tribal TANF program. Coordination between CCDF and TANF is critical to the success of both programs.

In addressing the economic conditions and available resources in support of its proposal for penalties against individuals, the Tribe may refer back to the information already provided in the plan in relation to the Tribe's proposal for minimum work participation requirements and time limits. It may also offer additional information in support of its proposal.

Tribal TANF Plan Processing

What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan? (§ 286.140)

The PRWORA does not give a date by which a Tribe must submit a Tribal Family Assistance Plan. In establishing the time frame within which a Tribe must submit the TFAP, we have to consider two factors. The first is the requirement found at section 405(b) of the Act that we provide to a State timely notice of the amount of the reduction to its State Family Assistance Grant (SFAG) that results from the operation of a Tribal TANF program. The statute requires this notice to be made 3 months before we take the reduction in the State's SFAG quarterly installment. The second consideration is the authority at section 412(b)(2) of the Act which provides for Secretarial approval of each Tribal Family Assistance Plan.

As mentioned in the discussion on determining the amount of a Tribal Family Assistance Grant, our experience to date has indicated that we need sufficient time to request data from the State, receive and process it, and resolve any issues, prior to making official notice to the State. We have outlined time frames at § 286.15 for requesting State data and resolving any issues concerning the data. In order to meet these time frames and meet the requirement for a three-month notice to the State, the proposed regulation at § 286.140 requires a Tribe to submit to us a letter of intent, unless the Tribes have already requested, received and resolved any issues regarding the State-

supplied data. We will use the letter of intent to request the data from the State and thus will need to specify the Tribe's proposed implementation date and proposed service area and population. We have proposed time frames for the submission of the letter of intent at § 286.140(a).

In order to meet the approval requirement, including review, discussion, and where appropriate, modification of the TFAP in consultation with the Tribe, we have determined that we will need a minimum of 120 days to accomplish these actions for Tribes who propose to implement a program on the first day of a calendar quarter. Therefore, the proposed regulation at § 286.140(a) requires the formal submission of a Tribal TANF plan to us based on the dates specified in the table below.

A Tribe will be able to implement a Tribal TANF program on the first day of any month. However, due to the requirement for a three-month notification to the State of its adjusted quarterly SFAG amount, a Tribe who wishes to implement a TANF program on other than the first day of a calendar quarter, i.e., January 1, April 1, July 1 or October 1, will need to submit both its letter of intent and its formal plan as if the proposed implementation date was the first day of a calendar quarter. The following table illustrates, based on implementation dates, when a Tribe needs to submit its letter of intent and formal plan in order for us to meet the statutory requirement for notification to the State.

If proposed implementation date is:	The letter of intent is due:	The formal plan is due:	And we must notify the State by:
January 1, February 1 or March 1 ..	July 1 of previous year	September 1 of previous year	October 1 of previous year.
April 1, May 1 or June 1	October 1 of previous year	December 1 of previous year	January 1 of same year.
July 1, August 1 or September 1 ...	January 1 of same year	March 1 of same year	April 1 of same year.
October 1, November 1 or December 1.	April 1 of same year	June 1 of same year	July 1 of same year.

We had considered whether to establish a format or preprint for the Tribal TANF plans. In discussions with Tribes, we heard from some Tribes that did not want us to dictate plan format. Yet we also heard from some Tribes that indicated they would appreciate having a preprint, similar to the one that was used for the Tribal JOBS program. We invite additional comments from readers as to whether to develop and require the use of a specific format or preprint for use by Tribes in submitting TFAPs. One option would be to develop an optional plan preprint.

As noted above, the Secretary has explicit authority to approve Tribal TANF plans. In exercising this authority, we plan to work with each Tribe that submits a TFAP to ensure that plans contain the information required by statute and regulation. A Tribe may make revisions to its plan during the review process. In instances where we disapprove a plan, the proposed regulation at § 286.140(e) provides an appeal process.

Public Law 102–477

Pub. L. 102–477, the Indian Employment, Training and Related Services Demonstration Act of 1992, allows Tribes to integrate certain federally funded employment, training and related services programs into a single plan. The purpose of this public law is to improve the effectiveness of these programs and services.

The PRWORA requires the Secretary to review and approve all TFAPs for Tribes seeking to operate a Tribal TANF Program. Those requirements are found at section 412(a). Section 5 of Pub. L. 102–477 states "the programs that may be integrated in a demonstration project * * * shall include any program under which an Indian tribe is eligible for receipt of funds." In order to receive a Tribal Family Assistance Grant, Tribes must first have approved Tribal TANF plans. Therefore, the proposed regulation at § 286.140(f) indicates that a Tribe must have separate approval of its TFAP from the Secretary before it can integrate the Tribal TANF program into a Pub. L. 102–477 plan.

How is a Tribal Family Assistance Plan amended? (§ 286.145)

Section 412 of the statute does not address amendments to Tribal TANF plans. We believe that Tribes need to have an opportunity, during the period covered by a plan, to amend the plan. Thus, the proposed regulation at § 286.145 allows Tribes to amend TFAPs.

In addition, the proposed regulation establishes the procedure for the submission, review and implementation of a Tribal TANF plan amendment. We propose to require the submission to the Secretary of a plan amendment no later than thirty (30) days prior to the implementation of the amendment. The implementation date for an approved amendment will to be the first day of any month. We will take action to approve or disapprove the proposed amendment within fourteen (14) days. If we disapprove a plan amendment, the Tribe will be given an opportunity to appeal the decision. Use of TANF funds for services or activities under an amendment cannot be made until the implementation date of the approved amendment.

Specials Provisions for Alaska

What special provisions apply to Alaska? (§ 286.150)

What is the process for developing the comparability criteria that are required in Alaska? (§ 286.155)

What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria? (§ 286.160)

If the Secretary, in the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so? (§ 286.165)

Section 412(i) of the Act requires the Tribal TANF eligible entities in the State of Alaska to operate a program in accordance with requirements comparable to the State of Alaska's TANF program. In response to this provision in the statute, we sponsored a meeting in Anchorage on November 15, 1996, to begin discussions on welfare reform and the Alaska-specific comparability issue. During that meeting a group formed, consisting of representatives from each of the Tribal TANF eligible entities, as defined in section 417(4)(B) of the Act, the Alaska State Department of Health and Social Service and ACF. This "Single Points of Contact (SPOC)" group has met regularly to discuss welfare reform issues unique to Alaska and worked on developing an initial comparability criteria document. This process, developed in the absence of any written Federal guidance, continues to further the communication among the Federal Government, the State and the 13 eligible Tribal TANF eligible entities in the State. The 13 eligible entities have

agreed to submit Tribal TANF plans for implementation no sooner than July 1, 1998, and thus, the comparability criteria document will continue to be refined until such time as an eligible entity submits the first Alaska Tribal TANF plan.

Because of the extensive work being done by the SPOC group, and the consultation that continues to take place, we have decided not to regulate either the specific comparability criteria or the process by which the comparability criteria will be developed. We believe that the SPOC group has a well-developed process for working on the Alaska-specific challenges of welfare reform and that allowing the greatest level of flexibility possible for this group will achieve the best results. However, we have chosen to include regulations on how to settle disputes that cannot be resolved through this process, as well as regulations on how to amend the comparability criteria. Based on the comments we received during the preconsultation process, we determined that regulations would be helpful in these two areas.

Subpart D—Accountability and Penalties

It is clear that, in enacting the applicable penalties at section 409(a) of the Act, Congress intended for Tribal flexibility to be balanced with Tribal accountability. To assure that Tribes fulfil their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409. The penalty areas indicate the areas of performance that Congress found most significant and appropriate for Tribal programs. Through specific sanctions, Congress provided the Secretary authority to enforce particular provisions in the law.

As referenced in section 412 of the Act, section 409(a) includes four penalties that can be imposed on Tribes. This subpart of the proposed rule covers these penalties.

What penalties will apply to Tribes? (§ 286.170)

The four penalties that apply to Tribes are as follows:

(1) A penalty of the amount by which a Tribe's grant was used in violation of part IV–A of the Act;

(2) A penalty of five percent of the TFAG as a result of findings which show that the Tribe intended to violate a provision of the Act;

(3) A penalty in the amount of the outstanding loan plus the interest owed on the outstanding amount for failure to repay a Federal loan; and

(4) A penalty for failure to satisfy the minimum work participation rates.

As specified in section 409(a)(3), the participation rate penalty amount will depend on whether the Tribe was under a penalty for this reason in the preceding fiscal year. If a penalty was not imposed on the Tribe in the preceding year, the penalty reduction will be a maximum of five percent of the TFAG in the following year. If a penalty was imposed in the preceding year, the penalty reduction will be increased by 2 percent per year, up to a maximum of 21 percent. We will take into consideration the severity of the failure in determining the amount of the penalty. In our consultation with Tribes, we have been advised that it will be difficult to satisfy the participation rates because of economic conditions (e.g., high unemployment rates) in Tribal service areas. Although these conditions will be considered in establishing the minimum participation rates for each TFAG program, we recognize that it may still be difficult for Tribes to meet this requirement. For this reason, we propose to take into consideration the following two factors in determining the amount of the penalty: (1) Increases in the unemployment rate in the Tribe's service area, and (2) changes in TFAG caseload (e.g., increases in the number of families receiving services).

If we impose a penalty on a Tribe, the following fiscal year's TFAG will be reduced. In calculating the amount of the penalty, all applicable penalty percentages will be added together and the total will be applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, other (non-percentage) penalty amounts will be subtracted. If this calculation would result in the TFAG being reduced by more than 25 percent, we propose to apply the State TANF limitation in section 409(d). In applying the penalties against a State TANF program, we cannot reduce the State's block grant by more than 25 percent in any quarter. If we are unable to collect the entire penalty in a fiscal year, any excess penalty amounts will be applied against the grants for succeeding years. We propose to treat Tribes like States and limit the amount of TFAG reduction due to penalties to 25 percent in any given fiscal year.

Failure To Repay a Federal Loan

Section 406 permits Tribes to borrow funds to operate their TANF programs. Tribes must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that Tribes may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of a State or other Tribe operating a Tribal TANF program. Tribes have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying Tribes and States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for Tribes that do not repay loans provided under section 406. We will penalize Tribes for failing to repay a loan provided under section 406 (see § 286.170(a)(4) and § 286.185). A specific vehicle for determining a Tribe's compliance with this requirement is unnecessary. In our loan agreements with Tribes, we will specify due dates for the repayment of the loans and will know if payments are not made.

Outstanding Penalties and Retrocession

In developing these proposed rules, a question arose concerning how we will treat situations where a Tribe decides to retrocede the TANF program. Since the Tribe will no longer receive a TFAG, we would be unable to collect any penalty by withholding or offsetting in the succeeding fiscal year. However, we stipulate in the proposed regulation that a Tribe that retrocedes a Tribal TANF program is responsible for the payment of any penalty that may be assessed for the period the program was in effect.

Replacement of Penalty Amounts

Section 409(a)(12) of the Act requires a State to expend its own funds to replace any reduction in its SFAG due to the imposition of a penalty. This is to prevent recipients from also being penalized for the State's failure to administer its program in accordance with the requirements of the Act. We believe that a similar failure by a Tribe should not cause Tribal TANF recipients to be penalized. For this reason, in the same fiscal year as a penalty is imposed, at § 286.170(c)(1) we propose to require a Tribe to expend Tribal funds to replace any reduction in the TFAG resulting from penalties that have been imposed. The Tribe must document compliance with this provision on its TANF Financial Report.

As amended by the Balanced Budget Act of 1997, section 409(a)(12) states that failure of a State to replace any reduction in its SFAG amount due to penalties may result in a penalty of not more than 2 percent of the SFAG, plus the amount that was required to be replaced. However, we do not want to

subject Tribes to a penalty that is so severe that services to recipients are jeopardized. Therefore, we propose at § 286.170(c)(2) to impose a similar, but not the same, penalty on Tribes. We stipulate in the proposed rule that we may impose a penalty of not more than 2 percent of the TFAG if a Tribe fails to expend its own funds to replace any reduction in the TFAG due to penalties.

We invite comments on our decision to impose this requirement.

How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused? (§ 286.175)

It is clear that in establishing the many penalties at section 409(a) of the Act, Congress expressed its intent that both States and Tribes balance flexibility with accountability. Because of the differences in the requirements for State and Tribal programs, as mentioned above, section 412 specifies that only four of the requirements and penalties under section 409 apply to Tribes. The penalty areas, or rather, the areas of Tribal performance that Congress found significant and attached fiscal sanctions to, vary considerably. Thus, in considering what method to employ in monitoring Tribal performance, we concluded that no one method could be employed. The following explains the different methods we will use to determine if a Tribe used TFAG funds in violation of the Act.

Misuse of Funds

The penalty at § 286.170(a)(1) and § 286.175(a) provides that if a Tribe has been found to have used funds in violation of title IV-A through an audit conducted under the Single Audit Act (31 U.S.C. Chapter 75), as referenced in section 102(f) of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413), the Tribe is subject to a penalty in the amount misused. This is the only penalty for which Congress identified a method for determining a penalty.

Under the requirements of the Single Audit Act, Tribes operating Federal grant programs meeting a monetary threshold (currently $300,000 for all Federal grants) must conduct an annual audit. Those Tribes which meet the threshold must comply with this annual audit requirement.

The single audit is an organization-wide audit that reviews Tribal performance in many program areas. We implemented the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments." Because of amendments made to the Single Audit Act in 1996, OMB recently revised this circular and a similar circular for non-profit organizations, A–133. Effective June 30, 1997, A–128 has been rescinded, with the result that the revised A–133 now includes the single audit requirements for States, local governments, Indian tribes and non-profit organizations.

In conducting their audits, among the tools auditors use are the statute and regulations for each program and a compliance supplement issued by OMB that focuses on certain areas of primary concern. Upon issuance of final regulations, we will prepare a TANF program compliance supplement.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting audits or reviews. In fact, we conclude that we have specific authority to conduct additional audits or reviews. Under 31 U.S.C. 7503(b),

> . . . a Federal agency may conduct, or arrange for additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or subrecipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

Thus, although the single audit will be our primary means for determining if a Tribe has misused funds, we may, through our own audits and reviews, or through OIG and its contractors, conduct audits or reviews of the Tribal TANF program which will not be duplicative of single organization-wide audit activities. Our need to conduct such audits may arise from complaints from individuals and organizations, requests by the Congress to review particular areas of interest, or other indications which signal problems in Tribal compliance with TANF program requirements. These additional reviews and audits may be the basis for assessing a penalty under this section.

Intentional Misuse of Funds

Where a penalty is determined for the misuse of funds, we may apply a second penalty if we determine that the Tribe has intentionally misused its TFAG. The proposed criteria for determining "intentional misuse" are found at § 286.175(c). We propose that the single audit should be the primary means for determining this penalty as it is linked to the penalty for misuse of funds. However, as with the use of the single audit for misuse of funds, we may also conduct other reviews and audits in response to complaints from individuals and organizations or other indications which signal problems with compliance with TANF program requirements. These additional reviews and audits may be the basis for assessing a penalty under this section.

Additional Single Audit Discussion

Although we propose that the single audit be the primary means to determine the specific penalties for misuse and intentional misuse of TFAG funds, we will not ignore other single audit findings such as Tribal non-compliance with the minimum participation rate requirement. Where the single audit is used to determine a penalty for failure to satisfy the minimum participation rate, the penalty that will apply is the percentage reduction described at § 286.170(a)(3), not the dollar-for-dollar penalty at § 286.170(a)(1) for misuse of funds.

The single audit may also reveal Tribal non-compliance with the negotiated time limit requirements (see § 286.110). Since Tribes are not subject to the State penalty at section 409(a)(9) for failure to comply with the time limit provisions, the question arose as to whether the Tribe's failure should be treated as a misuse of funds. Because the penalty for misuse of funds is equal to the amount that was spent incorrectly, the Tribal penalty could potentially be higher than the 5 percent penalty for States. As a result, a Tribe could be subject to a higher penalty by comparison. To avoid disparate treatment of States and Tribes in this area, we propose to limit any potential penalty for failure to comply with the Tribal time limits to a maximum of 5 percent.

Similarly, where we, or OIG, conduct an audit or review and have findings that could result in a penalty, the penalty amount that will apply is the penalty amount associated with the specific penalty under section 409(a) of the Act.

How will we determine if a Tribe fails to meet the minimum work participation rate(s)? (§ 286.180)

Tribal compliance with the minimum work participation rates under § 286.80 will be primarily monitored through the information required by section 411(a) of the Act. The proposed rule at § 286.70 provides additional information on minimum work participation requirements.

Some of the data required to be reported by section 411(a) of the Act were included to gather information in this area. Thus, we concluded that the section 411(a) data collection tools would be our primary means for

determining this penalty. Our ability to meet our program management responsibilities may also mean that we will conduct reviews in the future to verify the data submitted by Tribes, particularly in this area where a fiscal penalty is applicable.

Timely and accurate data is essential if we are to determine Tribal compliance in this area. Thus, if a Tribe fails to submit a timely report, we will consider this as a failure by the Tribe to meet its work participation rate requirements and will enforce the penalty for failure to meet the work participation requirements. Likewise, if the data indicating that the Tribe has met its participation rate is found to be so inaccurate as to seriously raise a doubt that the Tribe has met these requirements, we may enforce the participation rate penalty.

Although we propose that the single audit should be the primary means for determining certain specific penalties for misuse or intentional misuse of TFAG funds, if a single audit detects Tribal non-compliance in the minimum participation rate area, we cannot ignore that finding. Therefore, we will consider imposing a penalty based on the single audit in this area. The penalty amount that will apply is the penalty under section 409(a)(3) for failure to meet the participation rates and not the penalty under section 409(a)(1) for misuse of funds.

What is the penalty for a Tribe's failure to repay a Federal loan? (§ 286.185)

If the Tribe fails to repay its loan, plus any accumulated interest, in accordance with its agreement with ACF, we will reduce the Tribe's TFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed. Neither the reasonable cause provisions at § 286.200 of this chapter nor the corrective compliance plan provisions at § 286.205 of this chapter apply when a Tribe fails to repay a Federal loan. Please refer to § 286.210 for more information on this penalty.

When are the TANF penalty provisions applicable? (§ 286.190)

Tribes may choose to implement the TANF program at different times, but no earlier than July 1, 1997. In our consultation with Tribes, we received several comments concerning the difficulties that Tribes will face in attempting to implement a TANF program. Unlike States that were operating AFDC and similar welfare programs prior to implementing TANF, Tribes may not have this past history on which to build. We received several recommendations to provide for a grace period for implementation before we begin to assess any Tribal penalties.

Section 116(a)(2) of PRWORA delays the effective dates of some provisions for States, and we propose to apply a similar rule for Tribes. States are generally held accountable for meeting the requirements of the Act from the first day that the program is implemented. However, Congress delayed the effective dates of some provisions because it recognized that States may need some lead time in implementing certain requirements. In a number of instances it provided that the related penalty requirements will not apply for six months after the State implements a TANF plan. Similarly, while Tribes will be held accountable for the penalties for misuse and intentional misuse of funds from the date of implementation of TANF, the penalty for failure to satisfy minimum participation rates will not apply until six months after the date of implementation of the Tribal TANF program.

In the period prior to the issuance of final rules, Tribes must implement the TANF provisions in accordance with a reasonable interpretation of the statute. If a Tribe's actions are found to be inconsistent with the final regulations, but it has acted in accordance with a reasonable interpretation of the statute and its approved TFAP, no penalty will be taken against the Tribe. However, if a Tribe is found to be liable for a penalty prior to the issuance of final rules, the Tribe may present its arguments for "reasonable cause," which, if granted, will result in no penalty being taken.

What happens if a Tribe fails to meet TANF requirements? (§ 286.195)

If we determine that a Tribe has failed to meet any of the requirements included in the penalty provisions, we will notify the Tribe in writing. Our notification to the Tribe will include: (1) The penalty, including the specific penalty amount; (2) the basis for our decision; (3) an explanation of the Tribe's opportunity to submit a reasonable cause justification and/or corrective compliance plan where appropriate; and, (4) an invitation to the Tribe to present its arguments if it believes that the data or method for making the decision was in error, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

Reasonable Cause and Corrective Compliance Plan

Provisions at sections 409(b) of the Act state that we can excuse or reduce certain penalties if we determine that the Tribe has reasonable cause for failing to comply with certain requirements that are subject to a penalty. At § 286.200 Tribes will have the opportunity to demonstrate reasonable cause upon receipt of a written notification of a proposed penalty.

Section 409(c) of the Act, as amended by the Balanced Budget Act of 1997, provides that prior to imposing certain penalties against a Tribe, we will notify the Tribe of the violation and allow the Tribe the opportunity to enter into a corrective compliance plan which outlines how the Tribe will correct the violation and ensure continuing compliance with TANF requirements.

How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty? (§ 286.200)

In the discussion that follows, we will describe the factors that we will consider in deciding whether or not to excuse a penalty based on a Tribe's claim of reasonable cause, describe the contents of an acceptable corrective compliance plan that will correct the problems that resulted in a penalty, and discuss the process for applying these provisions.

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in determining a reasonable cause exceptions for a penalty. We propose to consider only certain, limited factors when we decide whether or not to excuse a penalty for reasonable cause.

During our deliberations on reasonable cause factors, we considered the opinions presented during our consultation process as well as the need to support the commitment of Congress, the Administration, States, and Tribes to the objectives of the TANF program, including program accountability. In keeping with these objectives, we propose a limited number of reasonable cause factors with an emphasis on corrective solutions. These are the same reasonable cause factors that we propose for State programs.

We propose factors which would be applicable to all penalties for which the reasonable cause provision applies and, in the case of the penalty for failure to satisfy the minimum participation rates, one additional factor only applicable to that specific penalty.

General reasonable cause may include the following: (1) Natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant that the Tribe failed to meet a requirement; (2) formally issued Federal guidance which provided incorrect information resulting in the

Tribe's failure, or guidance that was issued after a Tribe implemented the requirements of the Act based on a different but reasonable interpretation of the Act; and (3) isolated, non-recurring problems of minimum impact that are not indicative of a systemic problem.

We are also proposing one additional specific reasonable cause factor for a Tribe's failure to satisfy minimum work participation rates. Under the proposed rule at § 286.200(b), a Tribe may demonstrate that its failure is due to its granting of good cause to victims of domestic violence. In this case, the Tribe must show that it would have achieved the work participation rate(s) if cases with good cause were removed from both parts of the calculation (i.e., from the denominator and the numerator described in § 286.80). In addition, a Tribe must show that it granted good cause in accordance with policies approved in the Tribe's Family Assistance Plan (refer to § 286.125).

We understand that limited employment opportunities in many Tribal service areas may affect a Tribe's ability to satisfy the participation rates. However, as explained in § 286.95, the work participation requirements established for each Tribe will take into consideration the Tribe's economic conditions and resources. We invite comments on the additional reasonable cause factor for failure to meet work participation requirements, as well as whether there are other factors we should consider for determining reasonable cause.

The burden of proof rests with the Tribe to adequately and fully explain what circumstances, events, or other occurrences constitute reasonable cause with reference to failure to meet a particular requirement. The Tribe must provide us with all relevant information and documentation to substantiate its claim of reasonable cause for failure to meet one or more of these requirements.

What if a Tribe does not have reasonable cause for failing to meet a requirement? (§ 286.205)

As mentioned above, section 409(c) of the Act, as amended by the Balanced Budget Act of 1997, provides that prior to imposing certain penalties against a Tribe, the Tribe will be given the opportunity to enter into a corrective compliance plan.

The corrective compliance plan must identify the action steps, outcomes, and time frames for completion that the Tribe believes will fully and adequately correct the violation. We recognize that each plan will be specific to the violation (or penalty) and that each Tribe operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the Tribe's plan indicates that it will correct the situation leading to the penalty.

In instances where a Tribe used its TFAG in a manner that is prohibited (see § 286.175 on misuse of funds), we will expect that it will remove this expenditure from its TANF accounting records and provide steps to assure that such a problem does not recur.

Section 409(c)(3) of the Act appropriately requires that a violation be corrected "in a timely manner." A Tribe's timely correction of problems resulting in a penalty is critical if for no other reason than to assure that the Tribe is not subject to subsequent penalties. While we recognize that the types of problems Tribes encounter may vary, some concern exists that, if we do not restrict the length of a corrective compliance plan, there is the possibility a Tribe could indefinitely prolong the corrective compliance process, leaving problems unresolved into another fiscal year. As a result, the Tribe's ability to operate an effective program to serve the needs of its service population would be severely limited.

Therefore, we are considering a proposal to limit the period covered by a corrective compliance plan to 6 months, i.e., the plan period ends 6 months from the date we accept a Tribe's compliance plan. We believe that, for most violations, Tribes will have some indication prior to our notice that a problem exists and will be able to begin addressing the problem prior to submitting the corrective compliance plan. Therefore, we think it fair and reasonable that the corrective compliance plan period begin with our acceptance of the plan, giving the Tribe sufficient time to correct or terminate the violation(s). We would like to hear comments from Tribes and other interested parties on this proposal on the appropriate time period for a corrective compliance plan.

Our review of a Tribe's efforts to complete its action steps and achieve the outcomes within the time frames established in the plan will determine if the penalty will be fully excused, reduced, or applied in full.

Corrective Compliance Plan Review

During the 60-day period defined below, we propose to consult with the Tribe on any modifications to the corrective compliance plan and seek mutual agreement on a final plan. Any modifications to the Tribe's corrective compliance plan resulting from such consultation will constitute the Tribe's final corrective compliance plan and will obligate the Tribe to initiate the corrective actions specified in that plan.

We may either accept the Tribe's corrective compliance plan within the 60-day period that begins on the date the plan is received by us, or reject the plan during this same period. If a Tribe does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the Tribe that the penalty is imposed. The Tribe may appeal this decision in accordance with the provisions of section 410 of the Act and the proposed regulations at § 286.215. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D) of the Act.

If a Tribe corrects or discontinues, as appropriate, the problems in accordance with its corrective compliance plan, we will not impose the penalty. If we find that the Tribe has acted in substantial compliance with its plan but the violation has not been fully corrected, we may decide to reduce the amount of the penalty or, if the situation is compelling, excuse the penalty in its entirety. We will make a determination of substantial compliance based upon information and documentation furnished by the Tribe. In determining substantial compliance, we will consider the willingness of the Tribe to correct the violation and the adequacy of the corrective actions undertaken by the Tribe pursuant to its plan.

Process

Because both the reasonable cause and the corrective compliance plan provisions apply, we propose to establish the determination of reasonable cause in conjunction with the determination of acceptability of a Tribe's corrective compliance plan, if any is submitted. Thus, we propose that a Tribe may submit to us its justification for reasonable cause and corrective compliance plan within 60 days of the receipt of our notice of failure to comply with a requirement.

A Tribe may choose to submit reasonable cause justification without a corrective compliance plan. If we do not accept the Tribe's justification, the Tribe will be notified in writing. This notification will also inform the Tribe of its opportunity to submit a corrective compliance plan. The Tribe will have a 60-day period that begins with the date of the notice of the violation to submit to us a corrective compliance plan to correct the violation. A Tribe may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply to the particular penalty. .

Although we do not propose to require corrective compliance plans when a Tribe has reasonable cause for failing to meet a requirement which is subject to a penalty, we want to stress the importance of corrective action to prevent similar problems from recurring. While a Tribe may have a very good explanation why it failed to satisfy a requirement under the Act, we will work with the Tribe to identify solutions to eliminate these problems or prevent them from recurring. Otherwise, they may well continue and detract from the Tribe's ability to operate an effective program to serve the needs of its families. Our goal is to focus on positive steps to improve the program.

Due Dates

The Tribe's response to our notification that it has failed to meet a requirement under section 409(a) of the Act, either including its reasonable cause justification and/or its corrective compliance plan, must be postmarked within 60 days of the receipt of our notification letter to the Tribe. Also, if a Tribe believes that our determination is incorrect, any documentation supporting its position should be submitted within 60 days of the date of the receipt of our notice.

If, upon review of the Tribe's submittal, we find that we need additional information, the Tribe must provide the information within two weeks of the date of our request. This is to make sure we are able to respond timely.

Imposing the Penalty

Once a final decision is made to impose a full or partial penalty, we will notify the Tribe that its TFAG will be reduced and inform the Tribe of its right to appeal our decision to the Departmental Appeals Board (the Board).

In imposing a penalty, we will not reduce any TFAG to a Tribe by more than 25 percent. If this limitation of 25 percent prevents us from recovering the full amount of penalties during a fiscal year, we will carry the penalty forward and reduce the TFAG for the immediately succeeding fiscal year by the remaining amount.

What penalties cannot be excused? (§ 286.210)

Sections 409(b)(2) and 409(c)(3), as amended by the Balanced Budget Act of 1997, provide that reasonable cause and corrective compliance plan are not available for certain penalties. One of these penalties is the penalty for failure to repay a Federal loan issued under section 406. Thus we cannot forgive any outstanding loan amount or the interest owed on the outstanding amount.

The other penalty that cannot be excused is the penalty for failure to replace any grant reduction resulting from other penalties that have been imposed.

How can a Tribe appeal our decision to take a penalty? (§ 286.215)

Section 410 of the Act provides that within five days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action. We believe that it is reasonable to make these same appeal provisions, including the time frames in section 410, available for Tribes. Thus, within 60 days after the date a Tribe receives notice of such adverse action, the Tribe may appeal the action, in whole or in part, to the Board by filing an appeal with the Board. Where not inconsistent with section 410(b)(2), a Tribes's appeal to the Board will be subject to our regulations at 45 CFR part 16.

By inclusion in this rule, section 410(b)(2) provides that the Board shall consider an appeal filed by the Tribe on the basis of documentation the Tribe may submit, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board shall conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed.

Finally, a Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located. The district court shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) and (E) of section 706(2) of title 5, U.S.C. The review will be on the basis of the documents and supporting data submitted to the Board.

Subpart E—Data Collection and Reporting Requirements

General Approach

Section 412(h) of the Act makes section 411, regarding the data collection and reporting requirements for States, applicable to Tribes. The requirements for States are addressed separately under the proposed State TANF regulations published November 20, 1997. Although the reporting requirements stipulated under the proposed State TANF regulations are also required of Tribes under the statute, some of the particular data elements are not applicable. In order to minimize misunderstandings about what data elements are applicable to Tribes, we separately address the Tribal data collection and reporting requirements in this proposed rule.

Based on comments we received prior to our developing these proposed regulations, Tribes generally view the section 411 requirements as very difficult to meet. A barrier most often cited was the need for sophisticated automated tracking systems. The National Congress of American Indians conducted an extensive survey of Tribes, the results of which support the view that automated systems capabilities necessary for collecting and reporting the data required of the Act are sorely lacking on most reservations.

As another challenge in fulfilling the reporting requirements, Tribes cited the difficulties in obtaining current and accurate data from other program sources that are not administered by Tribes and that may not be readily available to Tribal TANF program operators. For example, Tribes do not generally administer programs such as Food Stamps, Medicaid, subsidized housing, Child Support Enforcement, and State-administered child care programs, yet the specified data elements require such information. Tribes expressed concern that obtaining these data would entail developing costly mechanisms to gather accurate information on a monthly basis from States.

We are sensitive to these issues and are committed to helping Tribes, to the extent possible, in meeting the reporting requirements.

Summary of the Proposed Data Collection and Reporting Provisions

There are a substantial number of specific data reporting requirements on Tribes and States under the TANF program. Some of these reporting requirements are explicit, primarily in section 411(a); others are implicit, e.g., Tribes and States represent the source of information for reports that the Secretary must submit to Congress and for the determination of penalties.

These data requirements support two complementary purposes: (1) They enable determinations about the success of TANF programs in meeting the purposes described in section 401; and (2) they assure Tribal accountability for key programmatic requirements. In particular, they ensure accurate measurement of Tribal performance in

achieving established work participation rates and other objectives of the Act.

Some of these purposes can only be achieved if data are comparable across Tribes and over time. At section 411(a)(6), the TANF statute provides that, to the extent necessary, the Secretary shall provide definitions of the data elements required in the reports mandated by section 411(a).

With respect to the first purpose, measuring the success of TANF programs, the data requirements of section 411(a) reflect particular features of the TANF program. States have collected and reported similar data on the characteristics, financial circumstances, and assistance received by families served by the AFDC and JOBS programs for many years. By requiring the collection of similar data under TANF, the statute enables the Congress, the public, Tribes and States to observe how welfare reform changes the demographic characteristics and the financial circumstances of, and the self-sufficiency services received by, needy families. In so doing, it promotes better understanding of what is happening nationwide—how Tribes and States are assisting needy families; how they are promoting job preparation and work; and what kinds of support two-parent families are receiving.

With respect to ensuring accurate measurement of work participation, section 411(a)(1)(A)(xii) specifically requires reporting on the "information necessary to calculate participation rates." Given the significance of the work rates for achieving the objectives of TANF and for determining whether Tribes face penalties, this is an area where accurate and timely measurement is particularly important.

Our goal in implementing the data collection and reporting requirements of the Act is to collect the data required and necessary to monitor program performance. A secondary goal is to give Tribes clear guidance about what these requirements entail and the consequences of failing to meet the requirements.

At the same time, however, we are sensitive to the issue of paperwork burden and committed to minimizing the reporting burden on Tribes, consistent with the TANF statutory framework. We welcome comments on whether these proposed rules, and appendices, are consistent with our interest in both minimizing reporting burdens and meeting TANF requirements.

Under this NPRM, Tribes must submit two quarterly reports (the TANF Data Report and the TANF Financial Report) and two annual reports (a program and performance report for the annual report to Congress and, as an addendum to the fourth quarter Financial Report, Tribal definitions and other information).

Most of the information we propose to collect is required by section 411(a). We do not have the authority to permit Tribes to report only some of the data required in section 411(a), and our authority to require expanded data reporting is limited. We are, however, proposing to require some additional data elements necessary to ensure accountability under section 409(a) (i.e., for penalties) and meet other requirements.

Before we discuss each of the quarterly and annual reports in detail, we present an overview of the major provisions of this part.

The following is a summary of the major proposed data collection and reporting provisions for Tribes.

We propose that each Tribe—

- Collect and report the disaggregated case record information on individuals and families and other data, as required in section 411(a) of the Act. "Disaggregated" case record information refers to reporting characteristics for each family and, for some characteristics, for every individual member of the family.
- Collect and report information to monitor compliance with the work requirements in section 407, as authorized by section 411(a)(1)(A)(xii).
- Collect and report aggregate fiscal data related to administrative costs and program expenditures, as required by sections 411(a)(2), (a)(3), and (a)(5) of the Act. This includes expenditures for transitional services (i.e., services to help employed, former Tribal TANF families remain self-sufficient). "Aggregated" data refers to reporting selected monthly totals for all families receiving benefits under the program.
- Collect and report a minimum number of items as break-outs of the data elements specified in section 411(a), such as citizenship status, educational level, and earned and unearned income; and a few additional items necessary to the operation of a data collection system, including Social Security Numbers. (Social Security Numbers are common personal identifiers that provide a means to track time limits and to ensure that duplicative TANF assistance is not received.)
- Collect and report a minimum number of data elements related to child care.
- Collect and report monthly aggregate data on non-custodial parents participating in work activities as required by section 411(a)(4) of the Act.
- Submit an annual report to assist us in preparing the Annual Report to Congress as required by section 411(b) of the Act.

We also propose a definition for "scientifically acceptable sampling method" which Tribes must use if they wish to submit data on a sample basis.

We propose to reduce the reporting burden on Tribes by—

- Giving Tribes the option of recording the amount received in the previous month if updated information has not been obtained for the following: (a) Subsidized housing, (b) Medicaid and/or (c) Food Stamps. If any of these programs are administered by the Tribe (either directly or through a contract), then we expect the current monthly data to be supplied.
- Requiring Tribes to report only on the demographic and financial characteristics of families applying for assistance whose applications are approved; and
- Allowing Tribes to report on work activities as defined in their TANF plans.

Readers should note that Appendices E, F and G of the proposed State TANF regulations require data on persons provided assistance by States under separate State programs and are inapplicable to Tribes. They are not included in the proposed Tribal TANF regulations.

Finally, in order to provide an opportunity for maximum review and public comment on the Tribal reporting requirements, we have attached the proposed Tribal TANF Data Report forms (including the specific data elements) as Appendices to the proposed part 286. We will revise these instruments following the comment period on the NPRM and will issue them to Tribes through the ACF policy issuance system. As mentioned earlier, we will not re-publish these appendices as part of the final rule.

We have submitted copies of this proposed rule and the proposed data reporting requirements that are included in this package to OMB for its review of the information collection requirements. We encourage Tribes, States, organizations, individuals, and others to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Laura Oliven, Desk Officer for ACF.

What data collection and reporting requirements apply to Tribal TANF programs? (§ 286.220)

This section describes the general scope and purpose of this subpart as it applies to Tribal TANF data collection and reporting. Paragraph (a) also makes clear that section 412(h) of the Act requires that the same reporting requirements of section 411 of the Act be applied to Tribal TANF Programs. We have modified the proposed State regulatory requirements in order to collect from Tribal TANF programs only the data required based on section 411(a) of the Act—quarterly reporting requirements; and section 411(b)—report to Congress, and section 412(c)—work participation requirements. One reason for the modification is that Tribes do not have a maintenance-of-effort (MOE) requirement; thus there is no need for data related to MOE. (Section 411(a)(1)(A)(xii) authorizes the collection of information that is necessary for calculating participation rates.)

The proposed regulation at § 286.230(a) also makes clear that Tribes will be required to submit: (1) Disaggregated data for two types of families: Those receiving assistance and those no longer receiving assistance; and (2) aggregated data for three categories of families: Those receiving assistance, those applying for assistance, and those no longer receiving assistance.

This subpart also explains the proposed content of the quarterly TANF Data Report, TANF Financial Report, and the annual report, as well as reporting due dates.

What definitions apply to this subpart? (§ 286.225)

The data collection and reporting regulations rely on the general TANF definitions at § 286.5.

In this subpart, we are proposing one additional definition—for data collection and reporting purposes only—a definition of "TANF family." This definition will apply to data collection for the Tribal TANF program as it will to State TANF programs.

The law uses various terms to describe persons being served under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under the TANF program. Therefore, each Tribe and State will develop its own definition of "eligible family," to meet its unique program design and circumstances.

We do not expect coverage and family eligibility definitions to be comparable across Tribes and States. Therefore, we have proposed a definition that will enable us to better understand the different Tribal and State programs and their effects. We are proposing that the definition of "TANF family" start with the persons in the family who are actually receiving assistance under the Tribal TANF program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an "eligible family" since Tribes may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income and resources would be counted in determining the family's eligibility for or amount of assistance.

We believe information on these additional individuals is critical to understanding the effects of TANF on families and the variability among Tribal and State caseloads, e.g., to what extent are differences due to, or artifacts of, Tribal or State eligibility rules.

- We need information on the parent(s) or caretaker relative(s) (i.e., an adult relative, living in the household but not receiving assistance, and caring for a minor child) to understand the circumstances that exist in no-parent (e.g., child-only) cases not covered by key program requirements, such as time limits and work requirements.
- We need information on minor siblings in order to understand the impact of "family cap" provisions.
- We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

We considered alternative terms on which to base TANF data collection such as the "TANF assistance unit" or "TANF reporting unit." However, as participants in the external consultation process pointed out, these terms no longer have a commonly understood meaning, particularly as Tribes and States re-design their assistance and service programs.

For research and other purposes, there was interest in collecting data on a broader range of persons in the household, e.g., any other person living in the household such as a grandmother or a non-marital partner of the mother. We determined that we should limit reporting to those categories of persons on whom the Tribes and States will gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

In the interest of greater comparability of data, we also considered defining terms such as "parent," "caretaker relative," and "sibling." We chose not to define these terms because we were concerned that our data collection policies could inadvertently constrain Tribal and State flexibility in designing their programs. We believe that variation among Tribal and State definitions in these areas will not be significant and will not decrease the usefulness of the data.

We believe this definition of family will not create an undue burden on Tribes since all these additional persons either are part of an aided child's immediate family or have their income or resources considered in determining eligibility.

Finally, we want to emphasize that we have proposed this definition of "TANF family" for reporting purposes only. Our aim is to obtain data that will be as comparable as possible under the statute, and, to the extent possible, over time. Some comparability in data collection is necessary for assessing program performance; understanding the impact of program changes on families and children; and informing the States, the Tribes, the Congress, and the public of the progress of welfare reform.

What quarterly reports must the Tribe submit to us? (§ 286.230)

We propose that each Tribe file two reports on a quarterly basis—the TANF Data Report and the Tribal TANF Financial Report. You will find the proposed Data Report in its entirety in the Appendices to this Part.

TANF Data Report

The proposed TANF Data Report consists of three sections (Appendices A, B, and C), two of which provide disaggregated case information. The third section provides aggregated data. The contents of each section are discussed below.

Disaggregated Data

We propose that each Tribe collect monthly and file quarterly disaggregated case information on: (1) Families receiving TANF assistance; and (2) families no longer receiving TANF assistance. (See Appendices A and B for the specific data elements.)

The data to be collected includes identifying and demographic information; the types and amount of assistance received under the TANF program and reason for and amount of any reduction in assistance; data on

adults, including the Social Security Number, educational status, citizenship status, work participation activities, employment status, earned and unearned income; and data on children, including the Social Security Number, educational status, and child care information.

We propose to reduce the burden on Tribes of reporting "demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance" as needed for the Annual Report to Congress. In interpreting this requirement in section 411(b)(2) of the Act, we propose to collect information, not on all families who apply, but only on those receiving assistance.

We took this position because the question of "what is an application" and "what is a denied application" (as opposed to a referral or diverted family, for example) is often very difficult to determine. If we were to require data on all applications, we believe that considerable portions of the demographic and financial data would be incomplete or entirely missing. We also believe that there would be extraordinary variability in the information provided across Tribes. This would have an adverse impact on the quality of the estimates made based on these data, and on our ability to interpret these data. Finally, data collection on all applicants could be very burdensome on Tribes as they would need to create an additional sample frame to select samples for all applications.

Data Administration

The following are items not required by statute but are necessary to, and implicit in, the administration of a data collection system:

1. Tribal Code
2. Reporting Month
3. Stratum
4. Family case number
5. Disposition

We received suggestions from a small number of Tribes that we should also include a Tribal enrollment identifier. We would appreciate further comments from more Tribes about whether a Tribal enrollment identifier would be helpful and for what purpose we might use such information.

Specifically, we would like to know whether collecting and reporting a Tribal enrollment identifier (1) is feasible for all Indians that a Tribal TANF program may serve; (2) should be collected for the aided adult(s) only, or for the aided children also; and (3) will be useful, i.e., what purpose would the Tribal enrollment data serve. We would also like to know whether obtaining Tribal enrollment information for all Tribal TANF recipients would be information a Tribe would generally include as part of its application process so that the burden of collecting and reporting the information would not outweigh its usefulness.

Non-Statutory Elements

We propose to request the following additional data that are not explicitly required by statute:

1. *ZIP Code:* This information is readily available and is needed for geographical coding and rural/urban analyses.

2. *Family Affiliation:* This information is needed to identify which persons are in the Tribe-defined family in order to monitor work participation, receipt of assistance, and time limits. However, since we propose that the Tribes be required to submit data for individuals who are only in the Tribe's definition of eligible family, Tribes will use only one code for this element: "member of the Tribe-defined eligible family."

3. *Social Security Number:* We propose to require that Social Security Numbers be reported to provide a means for tracking time limits that are applicable to TANF recipients as well as for ensuring non-duplicative assistance.

4. *Gender:* This is a standard demographic data element. The information could be collected under a relationship element (e.g., father, mother, brother). However, by using this single element, the coding is simpler; it is easier to report; and, thus, is less burdensome.

5. *Child Care:* These data are similar to data required under the Child Care Development Fund. TANF child care data is necessary for assessing program performance and the total financial commitment Tribes are making to achieve the work objectives of the Act.

6. *Child Support:* We propose to include two data elements related to child support. The amount of child support is a break-out of the data element "unearned income" required in section 411(a) of the Act. However, Tribes that do not administer the Child Support Enforcement program can leave this element for amount of child support received blank if they are unable to collect this data. The second data element, "cooperation with child support," is asked to implement the penalty provision in section 409(a)(5). Since section 409(a)(5) is not applicable to Tribal TANF programs, Tribes will have the option to leave this element blank should data for this element not be available.

Aggregated Data

We propose that each Tribe also collect monthly and file aggregate caseload data quarterly. (See Appendix C for the list of data elements.)

The proposed data elements in this section of the report cover families receiving, applying for, and no longer receiving TANF assistance. They include total figures on the number of approved and denied applications; the number of no-parent, one-parent, and two-parent families; the number of child and adult recipients; the number of teen heads-of-household; the number of births; the number of out-of-wedlock births; and the number of closed cases. (One item of expenditure data is requested: The total amount of TANF assistance provided.)

This section of the TANF Data Report incorporates data elements of sections 411(a) and 411(b). The data are also needed to test the reliability of the estimates and the representativeness of the disaggregated sample data as well as to calculate monthly participation rates.

Alternative Approach

As much as possible, the TANF Data Report, as it applies to Tribes, only requires data elements which are required by section 411 of the Act. While we remain confident that the analyses of the data from the TANF Report could be useful to Tribes, we recognize that Tribes may not have the resources to develop sophisticated data collection systems and/or will need ample time to develop such systems capable of gathering the information required in section 411.

Although the Act does not impose upon Tribes a penalty for non-reporting, we also recognize that non-reporting may indirectly result in a penalty because the TANF Data Report includes data necessary for calculating participation rates. Therefore, we are considering whether to develop a separate report to collect the information for participation rate purposes until the pc-based data collection and reporting system we plan to develop for Tribes is completed and accessible to all Tribes. Such a report would include monthly aggregate counts of TANF families with an adult or minor head-of-household receiving assistance and the number of TANF families with adults or minor heads-of-household who participated in work activities at least the minimum number of hours per week. In this way, Tribes will be assured that they will not be penalized for not meeting participation

rate targets simply because their systems capabilities for reporting the disaggregated and aggregated data are under development. If, however, a Tribe submits the data required of the TANF Report, we do not propose to require the additional participation report because it would be unnecessary. We invite any reactions the reader may have to this alternative approach.

TANF Financial Report

We are proposing that each Tribe file a Tribal TANF Financial Report on a quarterly basis. This report will be designed to serve multiple purposes: (1) To gather data under section 411, i.e., administrative costs, program expenditures, and expenditures related to transitional services for families who are no longer receiving assistance; and (2) to monitor expenditures and close out TANF grants for a fiscal year in accordance with the financial reporting requirements under 45 CFR 92.41.

The Tribal TANF Financial Report itself is not included in this proposed rule, but will be issued separately.

May Tribes use sampling and electronic filing? (§ 286.235)

We propose to implement section 411(a) of the Act by permitting Tribes to meet the data collection and reporting requirements by submitting the disaggregated case file data based on the use of a scientifically acceptable sampling method approved by the Secretary. Tribes may also submit all data on all cases monthly rather than on a sample of cases. However, Tribes, like States, are not authorized to submit aggregated data based on a sample.

We propose a definition of "scientifically acceptable sampling method" in paragraph (b) of this section. This definition reflects generally acceptable statistical standards for selecting samples and is consistent with existing AFDC/JOBS statistical policy. (See Appendix E for a summary of the sampling specifications.)

At a later date, we will issue the TANF Sampling and Statistical Manual which will contain instructions on the approved procedures and more detailed specifications for sampling methods applicable to both Tribal and State TANF programs.

We also propose to offer Tribes the opportunity to file quarterly reports electronically. We plan to develop a pc-based software package that will facilitate data entry and create transmission files for each report. The transmission files created by the system will be the standard file format for electronic submission to us. We also plan to provide some edits in the system to ensure data consistency. We invite Tribes to comment on what kinds of edits they would like in the system.

Because the data collection and reporting requirements are applicable in advance of our developing the software package, Tribes will have the option to submit a disk with the required data or submit hard copy reports. Additionally, Tribes that do not have the necessary equipment for electronic submission would continue to submit data on disk or submit hard copy reports.

When are quarterly reports due? (§ 286.240)

Unlike for States, there are no report submission time frames specified by the Act for Tribes. In our December 1997 policy announcement (TANF–ACF–PA–97–4), we stated that Tribes are required to submit the TANF data reports within 45 days following the end of each report quarter (consistent with that given to States). This proposed rule contains the same time frame; Tribes must submit the TANF Data Report and the Tribal TANF Financial Report no later than 45 days following the close of each report quarter. If the 45th day falls on a weekend or national holiday, the reports will be due no later than the next business day.

Section 116(a) of PRWORA indicates that the effective date for title IV–A of the Social Security Act as amended by PRWORA is July 1, 1997. This would seem to indicate that Tribal TANF grantees would need to begin collecting the required TANF data as of the implementation date of their Tribal TANF program. However, section 116(a)(2) states that the provisions of section 411(a) are delayed for States to the later of July 1, 1997, or the date that is 6 months after the date that the Secretary of Health and Human Services receives a complete State plan.

Although section 116(a) on its face seems to apply only to the States, we are interpreting this section to be applicable to Tribal grantees as well with regards to section 411(a). We base our interpretation on section 412(h) which states that section 411 applies to Tribes and the fact that section 116(a)(2) is titled "Delayed Effective Date For Certain Provisions". We interpret the language of section 116(a)(2) to mean that section 411(a) of the Act could be delayed by all entities subject to it. As the effective date of section 411(a) is delayed for States, we believe the effective date is also delayed for Tribes.

We also propose to apply section 116(a)(2) of the Act to Tribes. Section 116(a)(2) gives States a six-month reprieve from data reporting requirements upon initial implementation of their TANF programs. We received a number of comments from Tribes and other organizations that emphasized the need to recognize that, unlike States, most Tribes have never operated an AFDC-type program, and considerable time and effort will be needed to start up the Tribal TANF program. We believe that providing Tribes with a six-month time period before data needs to begin to be collected and submitted will aid Tribes in the initial program implementation stage.

Therefore, we propose that the effective date of a Tribe's first TANF Data Report and Tribal TANF Financial Report will be for the period beginning six months after the implementation date of its TANF program.

For example—

Tribe implements TANF	Data collection reporting period starts	Covering the period	First data report is due
July 1, 1997	January 1, 1998	Jan.–Mar. 1998	May 15, 1998.
October 1, 1997	April 1, 1998	Apr.–June 1998	Aug. 14, 1998.
November 1, 1997	May 1, 1998	May–June 1998	Aug. 14, 1998.
January 1, 1998	July 1, 1998	July–Sept. 1998	Nov. 16, 1998.
February 1, 1998	August 1, 1998	Aug.–Sept. 1998	Nov. 16, 1998.
March 1, 1998	September 1, 1998	Sept. 1998	Nov. 16, 1998.
April 1, 1998	October 1, 1998	Oct.–Dec. 1998	Feb. 15, 1999.

What happens if the Tribe does not satisfy the quarterly reporting requirements? (§ 286.245)

As previously discussed, section 412(h) of the Act requires Tribes to report on certain data in accordance with section 411. Unlike for States, the Act does not impose fiscal penalties on Tribes that do not submit the reports.

However, in the proposed § 286.245(b), we caution Tribes that by not submitting complete and accurate reports, which include the data necessary for calculating participation rates, they are liable for penalties associated with failure to meet the established participation targets.

In addition, failure to submit the required Tribal TANF Financial Report could raise an issue of proper use of funds.

What information must Tribes file annually? (§ 286.250)

Section 411(b) of the Act requires the Secretary to prepare an annual report to Congress addressing the States' implementation and operation of the TANF program. Since section 412(h) makes all of section 411 applicable to Tribal TANF programs, we interpret this to mean that Congress intended that Tribes as well as States collect the data necessary for the section 411(b) annual report. Therefore, we will need data on Tribal TANF programs for inclusion in the section 411(b) Report to Congress. We propose to collect some of the information required in section 411(b) for this Report to Congress as an addendum to the fourth quarter Tribal TANF Financial Report.

In addition, in order to obtain and reflect the most current and accurate information about Tribal TANF programs in the Secretary's Annual Report to Congress, we propose that each Tribe file an annual program and performance report. The content of this report will address the provisions of section 411(b) and the concerns of Congress and others about the implementation of the Tribal TANF program.

At a later date, we will work with Tribes and others to identify the specific information that should be included in this report.

In order to minimize the reporting burden on Tribes, we will collect some information for our report to Congress from the quarterly Data and Financial Reports, Tribal plans, annual reviews, and/or special studies. We also want to take advantage of the research efforts on the TANF program currently being conducted by several research organizations. To the extent that we may be able to build on existing endeavors, we will avoid duplication of effort, reduce reporting burden, and produce a better, more complete picture of Tribal TANF programs nationally.

When are annual reports due? (§ 286.255)

We propose at § 286.255(a) that the annual reports be filed 90 days after the close of the Federal fiscal year. This deadline is consistent with the deadline for most annual reports under DHHS grant programs.

We also propose at § 286.255(b) that Tribes implementing TANF during fiscal year 1997 will not be required to file data for the fiscal year 1997 annual report. We considered whether to require Tribes to submit an annual report for fiscal year 1997 as is requested of States. We rejected this because the few Tribes implementing the program during fiscal year 1997 will have had only three months of experience to report on. Additionally, since these regulations will not be finalized until after fiscal year 1997, gathering the data retroactively may be too burdensome. The proposed rule provides Tribes implementing TANF on July 1, 1997, with some relief in order to focus their efforts on implementing their programs.

How do the data collection and reporting requirements affect Public Law 102–477 Tribes? (§ 286.260)

Pub. L. 102–477, the Indian Employment and Training and Related Services Demonstration Act of 1992, affords Tribes an opportunity to consolidate certain programs into one grant. In paragraph (a) of this section we propose to require Tribes desiring to include TANF in their Pub. L. 102–477 plan to obtain approval to operate a Tribal TANF program first through the Tribal TANF plan submission process outlined in these regulations. (See § 286.140 regarding the Tribal TANF plan approval process).

While Pub. L. 102–477 enables Tribes to prepare one consolidated report regarding the programs included in the plan, it does not provide for waivers of statutory requirements. Because the Tribal TANF data collection and reporting requirements are statutory, § 286.260(b) clarifies that Pub. L. 102–477 Tribes must continue to submit the specified data of the Act.

However, in § 286.260(c) we propose that the statutory data (both disaggregated and aggregated) can be submitted in a Pub. L. 102–477 consolidated report to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), in a format negotiated with BIA. We considered whether we should require Pub. L. 102–477 Tribes to submit TANF reports directly to us, but rejected this idea on the basis that Pub. L. 102–477 specifically authorizes Tribes to consolidate data and make one report for all integrated programs in the plan. However, we propose to provide Pub. L. 102–477 Tribes with the option to report the required TANF data directly to us. We will work jointly with BIA in collecting the statutory data required.

B. PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

Discussion of Selected Regulatory Provisions

The following is a discussion of selected NEW regulatory provisions. It is divided into two sections. In the first section, we summarize each subpart of part 287 and provide background or additional explanatory information if it is helpful for clarification of the rules we are proposing. In the second section, we address these program areas in detail: client eligibility, work activities and coordination.

Discussion of Subparts of Part 287

Subpart A—General NEW Provisions

Under this subpart, we explain that part 287 contains our proposed rule for implementation of section 412(a)(2) of the Act, as enacted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). We emphasize that the statute provides flexibility to the Tribes in the implementation and operation of the NEW program, which is to provide work activities. Not only do we highlight this factor as an intent of the statute, we express that Tribes have the opportunity to create a program that will serve a Tribe's most vulnerable and needy population.

This is also the portion of the proposed rule where we indicate the start date and define terms in part 287 that have special meanings or need clarification to ensure a common understanding. Although a term may be defined in this subpart, we may choose to repeat the definition in a section if the term is uncommon or used in a special way. In drafting this section of the proposed rule, we chose not to define every term used in the statute and in these proposed rules. We believe that excessive definitions may unduly and unintentionally limit Tribal flexibility in designing programs.

Subpart B—Eligible Tribes

Funding to operate a NEW program is only available to those grantees who are defined as "eligible Indian tribes" in the statute. An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in fiscal year (FY) 1995. When PRWORA was enacted, 76 Indian tribes and Alaska Native organizations comprised the universe of eligible Indian tribes.

A consortium of eligible Indian tribes may receive NEW program funding. Where the consortium operated a JOBS

program in FY 1995, the Tribes may apply again as a consortium for NEW program funds or a Tribe that is a member of the consortium may apply for individual funding.

If a consortium should break up or any Tribe withdraws from a consortium, remaining funds and future grants must be divided among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW program.

Public Law 102–477 allows Tribal governments to coordinate federally funded programs that provide employment, training and related services into a single, comprehensive program. The 102–477 grantees may include the NEW program in their plan.

Subpart C—NEW Program Funding

With the creation of the TANF block grant, the JOBS programs, including Tribal JOBS, were terminated. However, funding was continued to those Tribes who operated a Tribal JOBS program in fiscal year 1995 for the purpose of providing work activities. The NEW program provides funding for Tribes and inter-tribal consortia to administer NEW programs in FYs 1997 through 2002. The funding level is set by the statute to remain at $7,633,287 for each FY, the FY 1994 Tribal JOBS funding level. This is the sole basis for the funding amounts. The FY 1994 JOBS grant amounts were originally based on agreements between Tribal JOBS grantees and their respective States regarding the ratio of Tribe to State adult AFDC recipients. Recipient counts and agreements are not now required, since the NEW program grants are fixed amounts. There are no matching fund requirements for NEW. To apply for funding, an eligible grantee must submit a plan that establishes it will operate a program in accordance with the statute.

We note in this subpart that the only restriction in determining if expenditures of NEW program funds is appropriate is whether the expenditures are made for work activities or support services for the designated service population. PRWORA does not define work activities or support services for the NEW program and we are not proposing a regulatory definition.

Some Tribes expressed an interest in being able to carry forward any unexpended NEW funds to the next year. Section 404(e) of the Act allows States to reserve amounts paid to the State for any FY for the purpose of providing TANF assistance without FY limitation. This section 404(e) of the statute is not applicable to Tribal TANF or NEW programs. Section 412(a)(2) is silent on an obligation period for NEW program funds. The absence in the statute of a specific provision authorizing carryover of NEW program funds means that such carryover is not permissible. Carryover authority may not be implied, but must be specifically granted by Congress. Unauthorized carryover of appropriated funds violates 31 U.S.C. 1301(c)(2) which states that an appropriation may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law in which it appears.

Subpart D—Plan Requirements

The submission of a NEW plan is to document the establishment and operation of a Tribe's NEW program. Through this document the Tribe requests funding for its program, as outlined. The requirement for submission of a NEW program plan also applies to a Tribe if it operates a Tribal TANF program.

For operation of a NEW program for the first year in which funds were available, FY 1997, we required a one year interim preprint. This allowed Tribes the opportunity to structure their initial NEW program around a shorter planning cycle. Guidance for preprint submittal to operate a FY 1997 NEW program was issued in the document entitled, "Native Employment Works Program: Abbreviated Preprint." Issued through a program instruction (NEW–ACF–PI–97–1, dated July 17, 1997), it also included instructions for Tribes operating Pub. L. 102–477 programs.

After the first year of operation, a Tribe will be able to develop a long range planning document that takes into consideration the positive and negative aspects of the interim preprint. We will require the ongoing plan, including certifications, to cover a three year period. The requirement that a NEW program plan cover a three year period is consistent with the Tribal TANF plan requirement. We will issue program instructions to provide guidance for submission and approval of future NEW plans and any subsequent modifications.

In general, Tribes who had previously consolidated their JOBS program into a Pub. L. 102–477 plan submitted a letter indicating that the NEW program was incorporated into their 102–477 plan where there were no substantive changes between the Tribal JOBS program and the NEW program. However, a 102–477 plan modification will be required if substantive changes are made in the future.

We considered a number of factors in deciding on the funding period for the NEW program. We noted that PRWORA first made funds available on July 1, 1997, for the operation of the NEW program. Yet, the law refers to funding the program for FYs and defines FY in the usual manner. We believe a correct interpretation of the statute is to have the NEW program begin on July 1 of each year and run through June 30 of the following year.

Subpart E—Program Design and Operations

In this subpart, we require Tribes to indicate who the program will serve, what activities and services will be provided, the coordination required to promote program effectiveness and program outcomes. Each Tribe will have to give careful consideration to the populations most in need of services to help them avoid long-term dependency and chronic unemployment. Opportunities for work may not be readily available on reservations and the surrounding economic conditions vary greatly. Consequently, we are allowing grantees the option of using program funds to encourage economic development initiatives leading to job creation. Additionally, we support the alternative of encouraging traditional subsistence and other culturally relevant activities.

Generally, the need for services exceeds the demand. Consequently, an intake prioritization procedure may need to be instituted to determine the order of serving clients. NEW programs should be tailored to fit the needs of its designated population and can be designed to serve a variety of clients, including General Assistance, TANF clients, other target groups such as teen parents, non-custodial parents, seasonal workers, unemployed parents and veterans, ex-offenders, etc.

It is not only important to coordinate with other tribal programs to develop a comprehensive service delivery system, but State programs, social service agencies, non-profit organizations, private industry and any other entity which can provide resources or opportunities for the benefit of NEW clients and their families. It is common practice to combine activities and services from different programs to provide seamless services to individual clients and their families. This may be very appropriate in the delivery of services to TANF clients who are obligated to participate in prescribed work activities. NEW program activities may supplement TANF work activities in order to meet TANF work requirements. In some cases States are counting NEW program participation in

fulfillment of participation rate requirements, where possible.

By allowing Tribes flexibility in determining measures of program outcome, we do not intend to imply that this is not an important area. Because each NEW program grantees' goals, objectives, population and economic conditions will be different, we anticipate that Tribes will develop different program standards and measures to realistically reflect achievable outcomes and evaluate program performance.

It is crucial for NEW program grantees to establish at the outset of program operations their goals, expected outcomes, and outcome measures. Only with such information will program administrators be able to reasonably evaluate to what extent a NEW program is successful.

Subpart F—Data Collection and Reporting Requirements

Although not specified in PRWORA for the NEW program, it is necessary to outline the minimum data gathering and reporting obligations for any grantee receiving Federal funding. The particular nature of the program services offered within the NEW program require the granting authority to set forth some uniform standards for appropriate accountability and service definitions and to insure the availability of information necessary for public oversight and evaluation.

Through considerable consultation and discussion with advocacy groups and many eligible Tribes, the Secretary has elected to develop minimum reporting and data collection requirements. This minimum reporting requirement will be evident in the shift from quarterly reporting, which was required under the Tribal JOBS program, to annual program and fiscal reporting. We expect NEW grantees to simply maintain certain case information on file rather than regularly submitting formal reports of these records to the Federal government.

We have taken care to not overburden NEW program grantees with elaborate and detailed program and fiscal reporting obligations that ultimately offer little management value while creating time-consuming paperwork and filing activities.

We propose to require NEW program grantees to submit a report covering program operations and a report covering financial expenditures. These reports must also be submitted by NEW program grantees who operate a TANF program.

The program operations report will provide information essential for monitoring and measuring program performance. It also includes data elements to assist management in evaluating program objectives, performance measures and allocation of resources.

We propose that the NEW program operations report be an annual report. The report will be due September 28, 90 days after the close of the NEW program year. The report is based on data collected from the current program year. The report must be submitted to the appropriate ACF Regional Administrator and a copy forwarded to the ACF, Office of Community Services, Division of Tribal Services, Attention: Data Reporting Team.

Under the Pub. L. 102–477 initiative, all services are integrated under a single 102–477 program plan; funds from the programs are commingled under a single budget; and activities are reported under a single reporting system. In general, the 102–477 Tribes deal only with the lead Federal agency, the Bureau of Indian Affairs (BIA). The report is submitted annually to BIA and shared with the Departments of Health and Human Services and Labor.

The program operations report was developed by the Secretary in consultation with NEW program grantees, and other interested parties. We identified the data elements that Tribes must collect on the proposed report and have submitted it to OMB for clearance. For simplicity and consistency the NEW report was formatted very similar to the 102–477 report.

For Tribes that operate both the NEW and TANF programs, we considered developing a single reporting instrument. However, we believe that a single report is not feasible nor would it reduce the amount of reporting. There are TANF reporting requirements in the law which are not required for NEW program grantees. Also, the reporting cycles could be different for a Tribe operating TANF and NEW programs and to report program operations with different reporting periods on a single form could be more complicated and confusing than if separate reports were used. In addition, we may obtain data which is not comparable if we require Tribes who operate only a NEW program to report one set of data while requiring Tribes that operate TANF and NEW programs to report on different or fewer data elements.

We propose that grantees report NEW financial activities annually on a Standard Form SF–269A. This form is required for reporting NEW program expenditures if a Tribe operates both NEW and TANF programs. 102–477 grantees also report financial data on the SF–269A.

Discussion of Program Areas

Consultation with our Tribal partners and other stakeholders indicate that these are the key areas which generate the most questions regarding the rules which we should develop to govern the NEW program.

Client Eligibility

Section 412(a)(2)(C) of the Act, as amended, allows for NEW grantees to define their population and service area(s) for the NEW program. This eligibility requirement is different and much broader than the Tribal JOBS Program, where the purpose was to provide Tribal members receiving AFDC with education, training and employment services.

There has been some discussion between ACF and the Tribes on how and who the NEW program should supplement or support. Should NEW be an adaptable, independent program addressing client needs; should it support the Tribal TANF program if a Tribe were to choose to operate its own TANF program; should it be a supplement to State TANF programs, acting as a safety net for those that don't qualify for TANF or who have met the TANF time limits; or should the program be a combination of these options? We believe each NEW grantee should make these determinations. For they are in the best position to respond to the needs of their reservation and to allocate Tribal program resources to meet those needs.

In light of scarce Tribal resources, unnecessary restrictions and rules may prevent Tribes from using their NEW programs as safety nets for families ineligible for other programs or who have met the time limits under TANF. Some Tribes are beginning to struggle with the issue of Tribal families having met the time limits in States where shorter time limits were established under waivers.

Moreover, the Indian and Native American Welfare-to-Work program, which all NEW grantees are eligible to apply for, makes available funding to serve categories of hard-to-employ TANF recipients. Duplication of services should be avoided. NEW grantees have the option of supplementing work activities and services provided by TANF and Welfare to Work programs to TANF clients or providing work activities and services to other needy clients. A grantee may also choose to serve both TANF and non-TANF clients. The decisions are left to

Tribal discretion and not dictated by these rules.

When an eligible Tribe elects to receive NEW program funds, but not to operate the Tribal TANF program, individuals receiving State TANF assistance must participate in State TANF work activities. If a NEW program elects to serve individuals who are State TANF recipients, then it should do so as an addition to or extension of the State TANF work activities to avoid duplication of services and provide maximum benefits to the families served. There will need to be close coordination between the TANF agency and the NEW program to provide comprehensive services to the families jointly served.

During our consultation phase, our Tribal partners overwhelmingly recommended that they be allowed maximum flexibility as reflected in PRWORA, including defining their service population and area(s) and designing and operating effective programs. Restrictive program rules on client eligibility and program expenditures would create barriers to providing comprehensive, seamless service delivery to needy Tribal families. Consequently, in keeping with the intent of the law and Tribal sovereignty, we have chosen to allow maximum flexibility in NEW client eligibility requirements, program design and operations.

Work Activities

Section 412(a)(2)(C) of the Act, as amended, describes the use of the NEW grant. Each Indian tribe to which a grant is made under this paragraph must use the grant for the purpose of operating a program *to make work activities available* to such population and service area(s) as the Tribe specifies.

ACF supports Tribal autonomy in defining what constitutes work activities. The statutory language for NEW contrasts notably with the statute for the now repealed Tribal JOBS program. JOBS required that Tribes have the following mandatory work components: Educational activity; job skills training; job readiness; and job development and job placement activity. In addition, a Tribe was required to have at least one of the following components: Group and individual job search; on-the-job training; community work experience; work supplementation; or alternative education, training and employment activities.

Section 407(d) defines work activities for the TANF program as: Unsubsidized employment; subsidized private or public sector employment; work experience; on-the-job training; job search and job readiness; community service programs; vocational educational training; job skills training; education; satisfactory attendance; and provision of child care.

In order to determine how work activities should be defined under NEW, we reviewed allowable activities under JOBS, TANF and Welfare to Work. Again we consulted our Tribal partners and other interested parties regarding both the Tribal TANF and the NEW programs.

The first question posed was: "What relationship should there be between work activities as defined in section 407 of the Act and the work activity that is required to be made available by section 412(a)(2)?" The consensus was that NEW program grantees should define "work activities" and that section 407 should serve as a guideline for them. Tribes stated that they should be allowed to use culturally relevant activities to solve unique problems. In order to give Tribes as much flexibility, as possible we have included the activities listed in section 407 as examples of NEW work activities. In addition, we have added job creation, economic development, and traditional subsistence activities, such as hunting and fishing.

The second question posed was: "What is the interconnection between NEW work activities and work activity participation to the State or Tribal TANF program?" Some felt that requiring NEW programs to "mirror" TANF work activities would facilitate Tribe/State coordination and simplify program administration. However, certain educational and training assistance which may accrue to the clients would be lost in the process, possibly eliminating client options which are more practical, available or needed. NEW programs can provide work activities above and beyond what can be provided under TANF or WTW programs. Thus broadening the clients' opportunities and options.

States and Tribes should coordinate closely to ensure that NEW and TANF work activities are best arranged in a complimentary fashion to advance the TANF client's employability goals.

Coordination

The Family Support Act of 1988 created the opportunity for Indian tribes and Alaska Native organizations to conduct JOBS programs. Operating a Tribal JOBS program required coordination with State programs to ensure that the necessary interfaces between the Tribal JOBS programs and State title IV–A programs were in place. It also required that a Tribe and a State be able to exchange information regarding such things as eligibility status, child care services, changes in employment status, and participation status.

Under the JOBS program, coordination was necessary in order to prevent duplication of services, assure the maximum level of services was available to participants and ensure that costs of other program services for which welfare recipients were eligible were not shifted to the JOBS program. Coordination between TANF and NEW is still needed for some of these same reasons.

All work activities required as a condition of eligibility to receive temporary public assistance are now prescribed by the TANF program administered by the States and, at their option, Tribes. There is some misunderstanding that NEW programs should serve all State tribal TANF recipients. With 74% of all NEW grants being below $100,000, it is unrealistic to expect NEW programs to be able to meet such demands. The Tribe and State should negotiate an agreement if the Tribe plans to serve all Tribal TANF clients, which may necessitate the need for supplementary funding from the State. Additional State funds would allow Tribes to: Increase the availability of activities and services; provide additional activities and services so that clients could meet the State's participation rate; or serve more clients.

Congress did not replace the Tribal JOBS program with another tribal work program of identical focus. Individuals who receive TANF assistance, regardless of Native American or Alaska Native heritage, have to participate in work activities as prescribed by the State TANF program (unless the Tribe elects to operate its own TANF program) in order to continue to be eligible to receive TANF assistance. Under these circumstances then, what are the requirements for coordination between a NEW program and a State TANF program?

For participants in the NEW program, coordination efforts should be designed to best fulfill the participants' self-sufficiency goals. It is critical that any TANF client referred to NEW be placed in activities leading to fulfillment of their employment goal or a job as soon as possible. Otherwise the client may consume valuable time.

Since TANF is time limited any TANF client not able to receive immediate services should be sent back to the referring agency. Clients in work activities under a State TANF program may be required to participate for a

minimum number of hours per week to remain eligible for TANF assistance, and the State maintains responsibility for the costs of that participation. If a NEW program elects to serve individuals who are participating in State TANF work activities, it should do so as an addition or extension to the State TANF work activities. This will avoid duplication of services, extend the range of work activities and services provided, and assure that costs of State TANF work activities are not shifted inappropriately to the NEW program. In order to provide these assurances, initial and ongoing coordination between the NEW program and the State TANF agency will be necessary. Also, the responsibility of meeting the TANF reporting requirements must be coordinated when serving TANF clients.

Moreover, local NEW and TANF case workers need to be aware of each program's requirements and procedures to offer the best mix of services to joint clients. For example, bonuses, stipends, and performance awards are allowed under NEW. However, depending on the rules of a Tribal or State TANF program, such payments made from NEW program funds may be counted as income in determining and maintaining TANF eligibility. Rules of other need-based programs may also require that such payments be counted as income in the eligibility and payment determinations. NEW program operators would want to take such information into consideration when determining what services to provide and the affect on their clients' situations.

For a Tribe that previously operated a JOBS program and elects to also conduct a TANF program, many of the coordination and collaboration relationships will be internal within the Tribe. This would also be true if a grantee had responsibility for the JTPA or BIA employment programs. The importance of developing and maintaining those relationships are amplified by the additional responsibilities that come with operating a public assistance program. Many contracted work sites, for example, used by a State may also be available to Tribal TANF programs.

Section 407(b)(4) of the Act, as amended by the Balanced Budget Act of 1997, expands the State option to include individuals receiving assistance from a Tribal TANF program in the State's work participation rate calculation to also include individuals receiving assistance from a Tribal NEW program. Unlike the Tribal JOBS program, this is a State option, and as such Tribes do not have authority to exempt NEW/TANF program participants from State TANF program work requirements. The statute is silent (exception at section 412(h) noted) regarding comparability of programs. However, the statute prescribes minimum work participation rates for State TANF programs and the minimum number of hours necessary to qualify as engaged in work, and we would expect that agreements on respective roles and responsibilities will be established between States and Tribes operating NEW programs.

V. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with Tribal, State, and local officials and their representative organizations, as well as a broad range of advocacy groups, researchers, and others to obtain their views prior to drafting these proposed rules.

We discuss the input received during the consultation process in the "Regulatory Framework" section of the preamble and in discussions of individual regulatory provisions. To a considerable degree, these proposed rules reflect the discussion and concerns of the groups with whom we consulted.

These proposed rules reflect the intent of PRWORA to achieve a balance between granting Indian tribes the flexibility they need to develop and operate effective and responsive programs and ensuring that the objectives of the program are met. In addition, these proposed rules recognize the differences that must and will exist between State and Tribal TANF programs.

Under the new law, Tribal flexibility is achieved by giving Tribes the opportunity to develop, design and administer their own TANF block grants; and for the NEW grantees, they have great flexibility in the design of their NEW programs. Ensuring that program goals are accomplished is achieved through the provisions on plan content, a number of Tribal TANF penalty provisions and data collection.

We support Tribal flexibility in various ways—such as by giving Tribes the ability to define key program terms; and supporting the negotiation of minimum work participation requirements and time limits for each Tribal TANF program. We support the achievement of program goals by ensuring that we capture key information on what is happening under both the Tribal TANF and NEW programs and maintaining the integrity of the work and other penalty provisions of the TANF program.

We take care to protect against negative impacts on needy families receiving assistance from Tribal TANF grantees by proposing three provisions not required by the statute, using the regulatory authority given to us by the statute. One of these provisions is the provision for retrocession; the second provision is the limit on administrative expenditures. Please refer to the preamble discussion at section § 286.25 for our decision to include a retrocession provision; the discussion on our decision to propose a limit on administrative expenditures can be found at § 286.40.

The third provision we have proposed to protect against negative impacts on needy families is the provision for the replacement of amounts withheld from a Tribal Family Assistance Grant due to the imposition of a penalty. We considered not proposing this provision; however, we believe that the benefits and protections this proposal brings to the needy families being served by a Tribal TANF program outweigh the potential cost to the Tribe.

One of our key goals in drafting the Tribal TANF penalty rules was to ensure Tribal performance in the key areas provided under statute—including work participation, the proper use of Federal funds and data reporting. The law specified that we should enforce Tribal actions in these areas and specified the penalty for each failure. Through the "reasonable cause" and "corrective compliance" provisions in the proposed rules we give some consideration to special circumstances within a Tribe to help ensure that the Tribe will not be unfairly penalized for circumstances beyond their control.

In the work and penalty areas of the Tribal TANF program, this rulemaking provides information to the Tribes that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on Tribes, but the basic expectations on Tribes are statutory, and the effect of these rules is non-material.

The financial impacts to the Federal government of these proposed rules should be minimal for three reasons. First is that the level of funding provided for both the block grant and the NEW program is fixed. Secondly, the amount of a Tribe's TANF block grant is deducted from the State TANF block grant of the State in which the Tribe is located; thus, no additional Federal outlays are necessary beyond the amount needed for State Family Assistance Grants. And thirdly, Tribal TANF grantees are not eligible for either the contingency fund or performance bonuses; thus, there are no additional outlays required for these two items. (We expect Federal outlays for State Family Assistance Grants to amount to nearly $15.6 billion in FY 1998; the annual outlay for the NEW program is fixed at $7,633,287.)

A Tribe's TANF grant could be affected by the penalty decisions made under the law and these rules. Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

These proposed rules could have a minimal financial impact on State governments. This is due to the statutory requirement that State data be used to determine the amount of a Tribal Family Assistance Grant. The actual impact to any one State is difficult to determine as it is not known how many Tribes will apply to administer a TANF program.

There are some States that have several federally-recognized Tribes within their borders; yet there are many that do not have any federally-recognized Tribes within their borders. (We estimate that the cost to a State to provide the needed data to determine the grant amount for one Tribe is less than $1,000.)

In the area of TANF data collection, the statutory requirements are very specific and extensive—especially with respect to case-record or disaggregated data. These proposed rules include additional data reporting with respect to program expenditures. They expand upon the expenditure data explicitly mentioned by the statute in order to ensure that: Needy families continue to receive assistance and services; monies go for the intended purposes; and the financial integrity of the program is maintained.

The impacts of these rules on needy individuals and families will depend on the choices the Tribe makes in implementing the new law. We expect our proposed Tribal TANF data collection to enable tracking of these effects over time and across Tribes. Overall, our assessment of these proposed rules indicates that they represent the least burdensome approach and that the impacts and consequences are non-material for individuals, Tribes, and other entities.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only federally-recognized Indian tribes and Alaska Native organizations. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This proposed rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (OMB has already approved an Interim Tribal TANF Data Report, Form ACF–343, Control No. 0970–0176). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the Paperwork Reduction Act, we have submitted the proposed Tribal TANF data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on these information collection activities.

The proposed rule contains provisions covering two quarterly reports (one program data, the other financial) and one annual report for the Tribal TANF program. In order to provide an opportunity for maximum review and public comment on the Tribal TANF Data Report, we have attached the proposed quarterly report (including the specific data elements) as an Appendix. We will revise this instrument following the comment period on the NPRM and will issue it to Tribes through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule.

The two quarterly reports are the Tribal TANF Data Report (Appendices A through C) and the Tribal TANF Financial Report. The Tribal TANF Data Report consists of three sections. Two of these three sections consist of disaggregated case-record data elements, and one consists of aggregated data elements.

We need this proposed information collection to meet the requirements of section 411(a) and to implement other sections, including sections 407 (work participation requirements), 409 (penalties), and 411(b) (Annual report to Congress).

The Tribal TANF Financial Report will consist of one form with an annual addendum to be submitted at the same time as the Tribal TANF Financial Report for the fourth quarter. We need this report to meet the requirements of sections 411(a)(2), 411(a)(3), and 411(a)(5), and to carry out our other financial management and oversight responsibilities. These include providing information that could be used in determining whether Tribes are subject to penalties under section 409(a)(1), tracking the reasonableness of our definition of "assistance," learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF cases.

We are also proposing an annual report in order to collect the data required by section 411(b). This report requires the submission of information about the characteristics of each Tribal program; the design and operation of the program; the services, benefits, and assistance provided; the Tribe's eligibility criteria; and the Tribe's definition of work activities. At its option, each Tribe may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for inclusion in the Department's annual report to the Congress.

We will work with representatives of Tribes and others to identify the specific form that will be used for this report, building on the information currently being collected on the TANF program by research organizations and others. Before we issue a reporting form to gather this information and instructions for filing the report, we will give the public another opportunity to comment on its content and the burden imposed.

The respondents for the Tribal TANF Data Reports and the Reasonable Cause/Corrective Action documentation process are the Tribes that have approved Tribal TANF plans.

In providing these estimates of reporting burden, we would like to point out that this reporting burden will be new to the Tribes. Unlike States, many Tribes do not have the electronic capacity for meeting the reporting requirements. However, Tribal TANF programs will not be required to submit

all of the data required for State TANF programs because some provisions for which data are being collected apply only to States. In addition, the number of families on which the Tribal TANF grantees will have to report will be substantially lower than the number of families on which States will be reporting.

In calculating the estimates of the reporting burden, we assumed that not all Tribal TANF grantees would collect the data by means of a review sample because their caseloads will not support a valid sample. However, we believe that a number of Tribal TANF grantees will eventually choose to undertake the one-time burden and cost of developing or modifying their systems to provide the required data directly from their automated systems, thus substantially reducing or eliminating the ongoing annual burden and cost reflected in these estimates.

In a very limited number of cases, we have proposed collecting information quarterly where the statute only requires annual reporting, or we have added elements not directly specified in the statute. We did this because one of our goals was to limit the number of reporting forms that Tribes would be required to complete.

Specifically, we believe that adding a data element like gender, that had been developed for other purposes such as Quality Control, would be useful to understanding the impact of the program and would not impose an additional burden. Similarly, while the reporting of the demographic and financial characteristics of families that become ineligible to receive assistance is only required annually, these data can be collected and reported more efficiently and without creating another form by inclusion in the quarterly TANF Data Report.

We realize the proposed reporting burden, required by the statute, represents a substantial burden. Nevertheless, we encourage Tribes and members of the public to comment and provide suggestions on how the burden can be further reduced and whether we have taken the right course regarding frequency of reporting.

The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Prior to the development of the data collection instruments, we conducted extensive consultations on general data collection issues with representative groups such as the American Public Welfare Association (APWA), the National Governors' Association (NGA), and the National Conference of State Legislatures (NCSL). We also researched the burden estimates for similar OMB-approved data collections in our inventory and consulted with knowledgeable Federal officials.

The annual burden estimates for these Tribal TANF data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal TANF Data Report-§ 286.230(b)	[1] 18	4	451	32,472
Tribal TANF Annual Report-§ 286.255	[2] 18	1	40	720
Reasonable Cause/Corrective Action Documentation-§ 286.200	[3] 18	1	60	1,080

[1] We estimate that there will be 18 Tribes with approved Tribal TANF plans and that these Tribes will be respondents.
[2] We estimate that the Tribes with approved Tribal TANF plans will be respondents.
[3] We estimate that the Tribes with approved Tribal TANF plans will be respondents, though not necessarily all will elect to respond the first year.

Estimated Total Annual Burden Hours: 34,272.

We encourage Tribes, States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Laura Oliven, Desk Officer for ACF.

To ensure that public comments have maximum effect in developing the final regulations and the data collection forms, we urge that each comment clearly identify the specific section or sections of the proposed rule or data collection form that the comment addresses and follow the same order as the regulations and forms.

We will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC. 20502, Attn: Ms. Wendy Taylor.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or

uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any 1 year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Part 286

Administrative practice and procedure, Day Care, Employment, Grant programs—social programs, Indian tribes, Loan programs—social programs, Manpower training programs, Penalties, Public Assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—Tribal Family Assistance Grants; 93.559—Loan Fund; 93.594—Native Employment Works Program; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: February 18, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: April 13, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR chapter II by adding parts 286 and 287 to read as follows:

PART 286—TRIBAL TANF PROVISIONS

Subpart A—General Tribal TANF Provisions

Subpart B—Tribal TANF Funding

Subpart C—Tribal TANF Plan Content and Processing

Subpart D—Accountability and Penalties

Subpart E—Data Collection and Reporting Requirements

Appendix G—Statutory Reference Table for Appendix C

Authority: 42 U.S.C. 612.

§ 286.1 What does this part cover?

Section 412 of the Social Security Act allows Indian tribes to apply to operate a Tribal Family Assistance program. This part implements section 412. It specifies:

(a) Who can apply to operate a Tribal Family Assistance program;

(b) The requirements for the submission and contents of a Tribal Family Assistance Plan;

(c) The determination of the amount of a Tribal Family Assistance Grant; and

(d) Other program requirements and procedures.

§ 286.5 What definitions apply to this part?

The following definitions apply under this part:

ACF means the Administration for Children and Families.

Act means the Social Security Act, unless otherwise specified.

Administrative cost means costs necessary for the proper administration of the TANF program. It includes the costs for general administration and coordination of this program, including overhead costs. Examples of administrative costs include:

(1) Salaries and benefits and all other indirect (or overhead) costs not associated with providing program services (such as diversion, assessment, work activities and post-employment services, and supports) to individuals;

(2) Preparation of program plans, budgets, and schedules;

(3) Monitoring of programs and projects;

(4) Fraud and abuse units;

(5) Procurement activities;

(6) Public relations;

(7) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(8) Costs for goods and services required for administration of the program such as rental and purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(9) Travel costs incurred for official business;

(10) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for Tribal staff); and

(11) Preparing reports and other documents related to program requirements.

Adult means an individual who is not a "minor child", as defined below.

Alaska Tribal TANF entity means the twelve Alaska Native regional nonprofit corporations in the State of Alaska and the Metlakatla Indian Community of the Annette Islands Reserve.

Assistance means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and one-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements). This definition does not apply to the use of the term assistance at subpart E of this chapter.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Comparability means similarity between State and Tribal TANF programs in the State of Alaska. Comparability, when defined related to services provided, does not necessarily mean identical or equal services.

Consortium means a group of Tribes working together for the same purpose and receiving consolidated TANF funding for that purpose.

The Department means the Department of Health and Human Services.

Duplicative assistance means the receipt of services/assistance from two or more TANF programs for the same purpose.

Eligible families means all families eligible for assistance under the Tribal TANF program funded under section 412(a), including:

(1) All U.S. citizens who meet the Tribe's criteria for Tribal TANF assistance;

(2) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. before August 22, 1996;

(3) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. on or after August 22, 1996, who have been in the U.S. for at least 5 years beginning on the date of entry into the U.S. with a qualified alien status, are eligible for 5 years after the date of entry into the U.S. There are exceptions to this 5-year bar for qualified aliens who enter on or after August 22, 1996, and the Tribal TANF program must cover these excepted individuals:

(a) An alien who is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act;

(b) An alien who is granted asylum under section 208 of such Act;

(c) An alien whose deportation is being withheld under section 243(h) of such Act; and

(d) An alien who is lawfully residing in any State and is a veteran with an honorable discharge, is on active duty in the Armed Forces of the U.S., or is the spouse or unmarried dependent child of such an individual;

(4) All permanent resident aliens who are members of an Indian Tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

(5) All permanent resident aliens who have 40 qualifying quarters of coverage as defined by Title II of the Act.

Eligible Indian tribe means any Tribe or intertribal consortium that meets the definition of Indian tribe in this section and is eligible to submit a Tribal TANF plan to ACF.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Grant period means the period of time that is specified in the Tribal TANF grant award document.

Indian, Indian tribe and Tribal Organization have the same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term *Indian tribe* means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

(3) Maniilaq Association;

(4) Association of Village Council Presidents;

(5) Tanana Chiefs Council;

(6) Cook Inlet Tribal Council;

(7) Bristol Bay Native Association;

(8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

Indian country has the meaning given the term in 18 U.S.C. Section 1151.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary

school (or in the equivalent level of vocational or technical training).

Minor Head-of-Household means a child under age 18, or 19 and a full-time student in a secondary school, who is the custodial parent of a minor child.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Qualified Aliens includes the following individuals:

(1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

(2) An alien who is granted asylum under section 208 of such Act;

(3) A refugee who is admitted to the United States under section 207 of such Act;

(4) An alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year;

(5) An alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Pub. L. 104–208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. 104–208;

(6) An alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;

(7) Certain battered aliens as defined in section 431 of the PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

(8) An alien who is a member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act; or

(9) An alien who is a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

Retrocession means the process by which a Tribe voluntarily terminates and cedes back (or returns) a Tribal TANF program to the State which previously served the population covered by the Tribal TANF plan. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded grant funds before that authority would otherwise expire.

Secretary means the Secretary of the Department of Health and Human Services.

Scientifically acceptable sampling method means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample and the sample size requirements are met.

SFAG or State Family Assistance Grant means the amount of the block grant funded under section 403(a) of the Act for each eligible State.

SFAP or State Family Assistance Plan is the plan for implementation of a State TANF program under PRWORA.

State means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means the Temporary Assistance for Needy Families Program which is authorized under title IV–A of the Social Security Act.

TANF funds mean funds authorized under section 412(a) of the Act.

TFAG or Tribal Family Assistance Grant means the amount of the block grant funded under section 412(a) of the Act for each eligible Tribe.

TFAP or Tribal Family Assistance Plan means the plan for implementation of the Tribal TANF program under section 412(b) of the Act.

Title IV–A refers to the title of the Social Security Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Title IV–F refers to the title of the Social Security Act that was eliminated with the creation of TANF and previously included the Job Opportunities and Basic Skills Training Program (JOBS).

Tribal TANF expenditures means expenditures of TANF funds, within the Tribal TANF program.

Tribal TANF program means a Tribal program subject to the requirements of section 412 of the Act that is funded by TANF funds on behalf of eligible families.

We (and any other first person plural pronouns) refers to The Secretary of Health and Human Services, or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-related services means all activities, assistance and services funded under Tribal TANF provided to an eligible family. See definition of "Assistance" above.

§ 286.10 Who is eligible to operate a Tribal TANF program?

(a) An Indian tribe that meets the definition of Indian tribe given in § 286.5 is eligible to apply to operate a Tribal Family Assistance Program.

(b) In addition, an intertribal consortium of eligible Indian tribes may develop and submit a single TFAP.

Subpart B—Tribal TANF Funding

§ 286.15 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?

(a) We will request and use data submitted by a State to determine the amount of a TFAG. The State data that we will request and use are State expenditures, including administrative costs (which includes systems costs), of Federal payments to the State for fiscal year 1994 under the former Aid to Families With Dependent Children, Emergency Assistance and Job Opportunities and Basic Skills Training programs, for Indian families residing in the service area or areas identified in the Tribe's letter of intent or Tribal Family Assistance Plan.

(1) When we request the necessary data from the State, the State will be requested to submit the data no later than 21 days from the date of the request.

(2)(i) If we do not receive the data requested from the State at the end of the 21-day period, we will so notify the Tribe.

(ii) The Tribe will have 21 days from the date of the notification in which to submit relevant information. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records. In such a case, we will use the data submitted by the Tribe to determine the amount of the TFAG.

(b) We will share the data submitted by the State under paragraph (a)(1) of this section with the Tribe. The Tribe must submit to the Secretary a notice as to the Tribe's agreement or disagreement with such data no later than 21 days after the date of our notice transmitting the data from the State. During this 21-day period we will help resolve any questions the Tribe may have about the State-submitted data.

(c) We will notify each Tribe that has submitted a TFAP of the amount of the TFAG. At this time, we will also notify the State of the amount of the reduction in its SFAG.

(d) We will prorate TFAGs that are initially effective on a date other than October 1 of any given Federal fiscal year, based on the number of days remaining in the Federal fiscal year.

§ 286.20 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?

(a) If a Tribe disagrees with the data submitted by a State, the Tribe may submit additional relevant information to the Secretary. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records.

(1) The Tribe must submit any relevant information within 21 days from the date it notifies the Secretary of its disagreement with State submitted data under § 286.15(b).

(2) We will review the additional relevant information submitted by the Tribe, together with the State-submitted data, in order to make a determination as to the amount of the TFAG. Our goal will be to make the determination no later than 14 days after receipt of the information.

(b) [Reserved]

§ 286.25 What is the process for retrocession of a Tribal Family Assistance Grant?

(a) A Tribe that wishes to terminate its TFAG prior to the end of its three-year plan must notify the Secretary in writing of the reason(s) for termination 120 days prior to the effective date of the termination. The effective date of the termination must coincide with the end of the grant period indicated on the Notice of Grant Award.

(b)(1) For a Tribe that retrocedes, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant.

(2) The Tribe must return all unobligated funds to the Federal government.

(c) We will increase the appropriate SFAG by the amount of the TFAG.

(d) We will not return a TANF program to a Tribe that has retroceded until the reasons for retrocession are no longer applicable and all outstanding funds and penalty amounts repaid.

(e) A Tribe which retrocedes a Tribal TANF program is:

(1) Responsible for:

(i) Complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective;

(ii) Any applicable penalties (see subpart D of this part); and

(iii) Any penalties resulting from audits for the period before the effective date of retrocession.

(2) Subject to the provisions of 45 CFR Part 92 and OMB Circulars A–87 and A–133, and other Federal statutes and regulations applicable to the TANF program.

§ 286.30 What are proper uses of Tribal Family Assistance Grant funds?

(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably related to the purposes of TANF, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) Was an authorized use of funds under Parts A or F of title IV of the Social Security Act, as such parts were in effect on September 30, 1995.

(b) [Reserved]

§ 286.35 What uses of Tribal Family Assistance Grant funds are improper?

(a) A Tribe may not use Tribal Family Assistance Grant funds to provide welfare-related services and assistance to:

(1) Families that do not include either a minor child who resides with a custodial parent or other adult caretaker relative of the child or a pregnant individual; or

(2) For more than the number of months as specified in a Tribe's TFAP; or

(3) Individuals who are not citizens of the United States and who do not meet the definition of "eligible families" at § 286.5.

(b) Tribal Family Assistance Grant funds may not be used to contribute to or to subsidize non-TANF programs.

(c) A Tribe may not use Tribal Family Assistance Grant funds for services or activities prohibited by OMB Circular A–87.

(d) All provisions in OMB Circular A–133 and in 45 CFR part 92 are applicable to the Tribal TANF program.

(e) Tribal TANF funds may not be used for the construction or purchase of facilities or buildings.

(f) Tribes must use program income generated by the Tribal Family Assistance grant for the purposes of the TANF program and for allowable TANF services, activities and assistance.

§ 286.40 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?

A Tribe may not expend more than 20 percent of its Tribal Family Assistance Grant for administrative costs during any grant period.

§ 286.45 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grant funds?

(a) Activities that fall within the definition of "administrative costs" at § 286.5 are subject to the limit at § 286.40.

(b) Information technology and computerization for tracking and monitoring are not administrative costs for this purpose.

§ 286.50 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

(a) Yes, Tribes must obligate Tribal Family Assistance Grants by the end of the fiscal year in which they are awarded. They must return any unobligated funds to the Federal government.

(b) Tribes will have until the end of the next fiscal year to expend any unliquidated obligations. Any unliquidated obligations remaining at the end of this period must also be returned to the Federal government.

Subpart C—Tribal TANF Plan Content and Processing

§ 286.55 How can a Tribe apply to administer a Tribal Temporary Assistance For Needy Families (TANF) Program?

Any eligible Indian tribe, Alaska Native organization or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

§ 286.60 Who submits a Tribal Family Assistance Plan?

(a) A TFAP must be submitted by the chief executive officer of the Indian tribe and be accompanied by a Tribal resolution supporting the TFAP.

(b) A TFAP from a consortium must be forwarded under the signature of the chief executive officer of the consortium and be accompanied by Tribal resolutions from all participating Tribes which demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving operation of the Tribal TANF consortia are the express responsibility of the consortium's governing board.

(c) When one of the participating Tribes in a consortium wishes to withdraw from the consortium, the Tribe needs to both notify the consortium and us of this fact.

(1) This notification must be made at least 120 days prior to the effective date of the withdrawal.

(2) The time frame in paragraph (c)1) of this section is applicable only if the Tribe's withdrawal will cause a change to the service area or population of the consortium.

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF

program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at § 286.65 and § 286.140.

§ 286.65 What must be included in the Tribal Family Assistance Plan?

(a) The TFAP must outline the Tribe's approach to providing welfare-related services for the three-year period covered by the plan, including:

(1) Information on the general eligibility criteria the Tribe has established, which includes a definition of "needy family," including income and resource limits and the Tribe's definition of "Tribal member family" or "Indian family."

(2) A description of the assistance, services and activities to be offered, and the means by which they will be offered. The description of the services, assistance and activities to be provided includes whether the Tribe will provide cash assistance, and what other assistance, services and activities will be provided.

(3) If the Tribe will not provide the same services, assistance and activities in all parts of the service area, the TFAP must indicate any variations.

(4) If the Tribe opts to provide different services to specific populations including: Teen parents and individuals who are transitioning off TANF assistance, the TFAP must indicate whether any of these services will be provided and, if so, what services will be provided.

(5) The Tribe's goals for its TANF program and the means of measuring progress towards those goals;

(6) Assurance that a 45-day public comment period on the Tribal TANF plan concluded prior to the submission of the TFAP.

(7) Assurance that the Tribe has developed a dispute resolution process to be used when individuals or families want to challenge the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

(b) The TFAP must identify which Tribal agency is designated by the Tribe as the lead agency for the overall administration of the Tribal TANF program along with a description of the administrative structure for supervision of the TANF program.

(c) The TFAP must indicate whether the services, assistance and activities will be provided by the Tribe itself or through grants, contracts or compacts with inter-Tribal consortia, States, or other entities.

(d) The TFAP must identify the population to be served by the Tribal TANF program.

(1) The TFAP must identify whether it will serve Tribal member families only, or whether it will serve all Indian families residing in the Tribal TANF service area.

(2) If the Tribe wishes to serve any non-Indian families (and thus include non-Indians in its service population), an agreement with the State TANF agency must be included in the TFAP. This agreement must provide that, where non-Indians are to be served by Tribal TANF, these families are subject to Tribal TANF program rules.

(e) The TFAP must include a description of the geographic area to be served by the Tribal TANF program, including a specific description of any "near reservation" areas, as defined at 45 CFR 20.1(r), or any areas beyond "near reservation" to be included in the Tribal TANF service area.

(1) In areas beyond those defined as "near reservation", the TFAP must demonstrate the Tribe's administrative capacity to serve such areas and the State(s)', and if applicable, other Tribe(s)' concurrence with the proposed defined boundaries.

(2) A Tribe cannot extend its service area boundaries beyond the boundaries of the State(s) in which the reservation and BIA near-reservation designations are located.

(3) For Tribes in Oklahoma, if the Tribe defines its service area as other than its "tribal jurisdiction statistical area" (TJSA), the Tribe must include an agreement with the other Tribe(s) reflecting agreement to the service area. TJSAs are areas delineated by the Census Bureau for each federally-recognized Tribe in Oklahoma without a reservation.

(f) The TFAP must provide that a family receiving assistance under the plan may not receive duplicative assistance from other State or Tribal TANF programs and must include a description of the means by which the Tribe will ensure duplication does not occur.

(g) The TFAP must identify the employment opportunities in and near the service area and the manner in which the Tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan, consistent with any applicable State standards. This should include:

(1) A description of the employment opportunities available, in both the public and private sector, within and near the Tribal service area; and

(2) A description of how the Tribe will work with public and private sector employers to enhance the opportunities available for Tribal TANF recipients.

(h) The TFAP must provide an assurance that the Tribe applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

§ 286.70 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?

(a) To assess a Tribe's level of success in meeting its TANF work objectives, a Tribe that submits a TFAP must negotiate with us minimum work participation requirements that will apply to the adults and minor heads of household receiving assistance from the Tribal TANF program.

(b) A Tribe which submits a TFAP must include in the plan the Tribe's proposal for minimum work participation requirements, which includes the following:

(1) For each fiscal year covered by the plan, the Tribe's proposed participation rate(s) for all families, for all families and two-parent families, or for one-parent families and two-parent families;

(2) For each fiscal year covered by the plan, the Tribe's proposed minimum number of hours per week that adults and minor heads of household will be required to participate in work activities;

(i) If the Tribe elects to include reasonable transportation time to and from the site of work activities in determining the hours of work participation, it must so indicate in its TFAP along with a definition of "reasonable" for purposes of this subsection, along with:

(A) An explanation of how the economic conditions and/or resources available to the Tribe justify inclusion of transportation time in determining work participation hours; and

(B) An explanation of how counting reasonable transportation time is consistent with the purposes of TANF;

(3) The work activities that count towards these work requirements;

(4) Any exemptions, limitations and special rules being established in relation to work requirements; and

(5) The Tribe's rationale for the above if the Tribe's proposal differs from that required of State TANF programs (refer to section 407(a) of the Act for the participation rate targets for States, section 407(c)(1)(A) of the Social Security Act for the minimum number of hours per week required of State TANF families, and § 286.95 for the work activities applicable to State TANF programs).

(i) The rationale must address how the proposed work requirements are

consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(ii) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

§ 286.75 What additional information on minimum work participation rates must be included in a Tribal Family Assistance Plan?

(a) A Tribe's proposed rates may reflect increases over the life of the Tribal TANF plan.

(b) Tribes will be given the opportunity to propose revisions to their targeted participation rates for subsequent years.

§ 286.80 How will we calculate the work participation rates?

(a) Work participation rate(s) will be the percentage of families with an adult or minor head-of-household receiving TANF assistance from the Tribe who are participating in a work activity approved in the TFAP for at least the minimum number of hours approved in the TFAP.

(b) The participation rate for a fiscal year is the average of the Tribe's participation rate for each month in the fiscal year.

(c) A Tribe's participation rate for a month is expressed as the following ratio:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is participating in activities for the month (numerator), divided by

(2) The number of families that include an adult or a minor head-of-household receiving TANF assistance during the month excluding:

(i) Families that were penalized for non-compliance with the work requirements in that month as long as they have not been sanctioned for more than three months (whether or not consecutively) out of the last 12 months; and

(ii) Families with children under age one, if the Tribe chooses to exempt these families from participation requirements.

(d) If a family receives assistance for only part of a month or begins participating in activities during the month, the Tribe may count it as a month of participation if an adult or minor head-of-household in the family is participating for the minimum average number of hours in each full week that the family receives assistance or participates in that month.

(e) Two-parent families in which one of the parents is disabled are considered one-parent families for the purpose of calculating a Tribe's participation rate.

§ 286.85 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?

During the month, an adult on minor head-of-household must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved Tribal Family Assistance Plan.

§ 286.90 What, if any, are the special rules concerning counting work for single custodial parents, caretaker relatives and two-parent families?

(a) A single custodial parent or caretaker relative with a child under age 6 will count as engaged in work if (s)he participates for an average of at least 20 hours per week.

(b) Parent in a two-parent family may share the number of hours required to be considered as engaged in work.

§ 286.95 What activities count towards the work participation rate?

(a) Activities that count toward a Tribe's participation rate may include, but are not limited to, the following:

(1) Unsubsidized employment;

(2) Subsidized private sector employment;

(3) Subsidized public sector employment;

(4) Work experience;

(5) On-the-job training (OJT);

(6) Job search and job readiness assistance; (see § 286.100)

(7) Community service programs;

(8) Vocational educational training; (see § 286.100)

(9) Job skills training directly related to employment;

(10) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate;

(12) Providing child care services to an individual who is participating in a community service program; and

(13) Other activities that will help families achieve self-sufficiency.

(b) [Reserved]

§ 286.100 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?

(a) Tribes are not required to limit vocational education for any one individual to a period of 12 months.

(b) There are two limitations concerning job search and job readiness:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year.

(2) If the Tribe's unemployment rate in the Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) If job search or job readiness is an ancillary part of another activity, then there is no limitation on counting the time spent in job search/job readiness.

§ 286.105 What safeguards are there to ensure that participants in Tribal TANF work activities do not displace other workers?

(a) An adult or minor head-of-household taking part in a work activity outlined in § 286.95 cannot fill a vacant employment position if:

(1) Any other individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its work force in order to fill the vacancy with the TANF participant.

(b) A Tribe must establish and maintain a grievance procedure to resolve complaints of alleged violations of this displacement rule.

(c) This regulation does not preempt or supersede Tribal laws providing greater protection for employees from displacement.

§ 286.110 What information on time limits for the receipt of welfare-related services must a Tribe include in its Tribal Family Assistance Plan?

(a) The TFAP must include the Tribe's proposal for:

(1) Time limits for the receipt of Tribal TANF benefits;

(2) Any exceptions to these time limits; and

(3) The percentage of the caseload to be exempted from the time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(b) The Tribe must also include the rationale for its proposal in the plan.

The rationale must address how the proposed time limits are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(1) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require that the Tribe submit additional information about the rationale before we approve the proposed time limits.

(d) Tribes must not count towards the time limit:

(1) Any month of receipt of assistance by an individual when the individual was a minor who was not the head-of-household or married to the head-of-household; and

(2) Any month of receipt of assistance by an adult during which the adult lived in Indian country or in an Alaskan Native Village in which at least 50 percent of the adults were not employed.

(e) A Tribe must not use any of its TFAG to provide assistance (as defined in § 286.5) to a family that includes an adult or minor head-of-household who has received assistance beyond the number of months (whether or not consecutive) that is negotiated with the Tribe.

§ 286.115 Can Tribes make exceptions to the established time limit for families?

(a) Tribes have the option to exempt families from the established time limits for the following reasons:

(1) Hardship, as defined by the Tribe, and

(2) The family includes someone who has been battered or has been subject to:

(i) Physical acts that resulted in, or treated to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(b) If a Tribe elects this option, the Tribe must specify in its TFAP the maximum percent of its average monthly caseload of families on assistance that will be exempt from the established time limit.

(1) If the Tribe proposes to exempt more than 20 percent of the caseload, the Tribe must include a rationale in the plan.

(2) [Reserved]

§ 286.120 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?

Yes, the Tribe must count prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute or regulation.

§ 286.125 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?

(a) The TFAP must include the Tribe's proposal for penalties against individuals who refuse to engage in work activities. The Tribe's proposal must address the following:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family?

(2) After consideration of the provision specified at § 286.135, what will be the proposed Tribal policies related to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain child care?

(3) What good cause exceptions, if any, does the Tribe propose that will allow individuals to avoid penalties for failure to engage in work?

(4) What other rules governing penalties does the Tribe propose?

(5) What, if any, will be the Tribe's policies related to victims of domestic violence?

(b)(1) The Tribe's rationale for its proposal must also be included in the TFAP. The rationale must address how the proposed penalties against individuals are consistent with the purposes of TANF, consistent with the economic conditions and resources of the Tribe, and how they are similar to the requirements of section 407(e) of the Act.

(2) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to; poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require a Tribe to submit additional information about the rationale before we approve the proposed penalties against individuals.

§ 286.130 What is the penalty if an individual refuses to engage in work activities?

If an individual refuses to engage in work activities in accordance with the minimum work participation requirements specified in the approved TFAP, the Tribe must apply to the individual the penalties against individuals that were established in the approved TFAP.

§ 286.135 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?

A family must not be penalized if a custodial parent refuses to engage in work activities because (s)he cannot find child care and the Tribe's established exception due to inability to locate child care is satisfied.

§ 286.140 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?

(a) A Tribe must submit a Tribal TANF letter of intent and/or a TFAP to the Secretary according to the following time frames:

Implementation date:	Letter of intent due:	Formal plan due:	Notification to the State:
January 1, February 1 or March 1 ..	July 1 of previous year	September 1 of previous year	October 1 of previous year.
April 1, May 1 or June 1	October 1 of previous year	December 1 of previous year	January 1 of same year.
July 1, August 1 or September 1 ...	January 1 of same year	March 1 of same year	April 1 of same year.
October 1, November 1 or December 1.	April 1 of same year	June 1 of same year	July 1 of same year.

(b) A Tribe which has requested and received data from the State and has resolved any issues concerning the data more than 6 months before its proposed implementation date, is not required to submit a letter of intent.

(c) The effective date of the TFAP must be the first day of any month.

(d) The original TFAP must be sent to the appropriate ACF Regional Administrator, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families.

(e) A Tribe that submits a TFAP or an amendment to an existing plan that cannot be approved by the Secretary will be given the opportunity to make revisions in order to make the TFAP, or an amendment, approvable. If a plan is disapproved, the Tribe may appeal the decision to the Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

(f) Tribes operating a consolidated Pub. L. 102–477 program must submit a TFAP plan to the Secretary for review and approval prior to the consolidation of the TANF program into the Pub. L. 102–477 plan.

§ 286.145 How is a Tribal Family Assistance Plan amended?

(a) An amendment to a TFAP is necessary if the Tribe makes any substantial changes to the plan, including those which impact an individual's eligibility for Tribal TANF services or participation requirements, or any other program design changes which alter the nature of the program.

(b) A Tribe must submit a plan amendment(s) to us no later than 30 days prior to the proposed implementation date. Proposed implementation dates shall be the first day of any month.

(c) We will review and either approve or disapprove the plan amendment(s) within 14 days of receipt.

(d) Approved plan amendments are effective 30 days after date of submission.

(e) A Tribe whose plan amendment is disapproved may appeal our decision to the Departmental Appeals Board no later than 60 days from the date of the disapproval. This appeal to the Board should follow the provisions of the rules under this subpart and those at 45 CFR part 16, where applicable.

§ 286.150 What special provisions apply in Alaska?

A Tribe in the State of Alaska that receives a TFAG must use the grant to operate a program in accordance with program requirements comparable to the requirements applicable to the State of Alaska's Family Assistance program. Comparability of programs must be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the Tribes in Alaska. The State of Alaska has authority to waive the program comparability requirement based on a request by an Indian tribe in the State.

§ 286.155 What is the process for developing the comparability criteria that are required in Alaska?

We will work with the Tribes in Alaska and the State of Alaska to develop an appropriate process for the development and amendment of the comparability criteria.

§ 286.160 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?

(a) If a dispute arises between the State of Alaska and the Tribes in the State on any part of the comparability criteria, we will be responsible for making a final determination and notifying the State of Alaska and the Tribes in the State of the decision.

(b) Any of the parties involved may appeal our decision, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

§ 286.165 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?

(a) At such time that any of the above parties wish to amend the comparability document, the requesting party should submit a request to us, with a copy to the other parties, explaining the requested change(s) and supplying background information in support of the change(s).

(b) After review of the request, we will make a determination on whether or not to accept the proposed change(s).

(c) If any party wishes to appeal the decision regarding the adoption of the proposed amendment, they may appeal using the appeals process pursuant to § 286.140.

Subpart D—Accountability and Penalties

§ 286.170 What penalties will apply to Tribes?

(a) Tribes will be subject to fiscal penalties and requirements as follows:

(1) If we determine that a Tribe misused its Tribal Family Assistance Grant funds, including providing assistance beyond the Tribe's negotiated time limit under § 286.110, we will reduce the TFAG for the following fiscal year by the amount so used;

(2) If we determine that a Tribe intentionally misused its TFAG for an unallowable purpose, the TFAG for the following fiscal year will be reduced by an additional five percent;

(3) If we determine that a Tribe failed to meet the minimum work participation rate(s) established for the Tribe, the TFAG for the following fiscal year will be reduced. The amount of the reduction will depend on whether the Tribe was under a penalty for this reason in the preceding year. If not, the penalty reduction will be a maximum of five percent. If a penalty was imposed on the Tribe in the preceding year, the penalty reduction will be increased by an additional 2 percent, up to a maximum of 21 percent. In determining the penalty amount, we will take into consideration the severity of the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406, we will reduce the TFAG for the following fiscal year will be reduced by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance

with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year and this penalty cannot be excused (see § 286.210).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

§ 286.175 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?

(a) We will use the single audit or Federal review or audit to determine if a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under § 286.170(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under § 286.170(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A–87 and A–133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 286.30) and the provisions listed in § 286.35.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under § 286.110, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

§ 286.180 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?

(a) We will use the Tribal TANF Data Reports required under § 286.230 to determine if we will assess the penalty under § 286.170(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) The information from the Tribe's Tribal TANF Data Reports needed to determine the Tribe's work participation rate(s) must be timely, complete and accurate under § 286.230. The accuracy of the reports are subject to validation by us.

(1) If the Tribe fails to submit, on a timely basis, the Tribal TANF Data Report, we may apply the penalty under § 286.170(a)(3).

(2) If we find reports to be so significantly incomplete or inaccurate that we seriously question whether the Tribe has met its participation rate, we may apply the penalty under § 286.170(a)(3).

(c) If the single audit determines that the Tribe failed to meet the minimum participation rate, we may assess the penalty under § 286.170(a)(1).

§ 286.185 What is the penalty for a Tribe's failure to repay a Federal loan?

(a) If a Tribe fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the TFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 286.200 nor the corrective compliance plan provisions at § 286.205 apply when a Tribe fails to repay a Federal loan.

§ 286.190 When are the TANF penalty provisions applicable?

(a) A Tribe may be subject to penalties, as described in § 286.170(a)(1), § 286.170(a)(2) and § 286.170(a)(4), for conduct occurring on and after the first day of implementation of the Tribe's TANF program.

(b) A Tribe may be subject to penalties, as described in § 286.170(a)(3), for conduct occurring on and after the date that is six months after the Tribe begins operating the TANF program.

(c) We will not apply the regulations retroactively. To the extent that a Tribe's failure to meet the requirements of the penalty provisions is attributable to the absence of Federal rules or guidance, Tribes may qualify for reasonable cause, as discussed in § 286.200.

§ 286.195 What happens if a Tribe fails to meet TANF requirements?

(a) If we determine that a Tribe is subject to a penalty, we will notify the Tribe in writing. This notice will:

(1) Specify what penalty provision(s) are in issue;

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

(4) Explain how and when the Tribe may submit a reasonable cause justification under § 286.200 and/or a corrective compliance plan under § 286.205(d) for those penalties for which reasonable cause and/or corrective compliance plan apply; and

(5) Invite the Tribe to present its arguments if it believes that the data or method we used were in error or were insufficient, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

(b) Within 60 days of receipt of our written notification, the Tribe may submit a written response to us that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the Tribe acted prior to [effective date of final regulations], on a reasonable interpretation of the statute;

(2) Demonstrates that the Tribe had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan as discussed in § 286.205.

(c) If we find that the Tribe was correct and that a penalty was improperly determined, or find that a Tribe had reasonable cause for failing to meet one or more requirements, we will not impose that penalty and so notify the Tribe in writing.

(d) If we determine that the Tribe's arguments that our original determination was incorrect or that it had reasonable cause are not persuasive, we will notify the Tribe of our decision in writing.

(e) If we request additional information from a Tribe, it must provide the information within two weeks of the date of our request.

§ 286.200 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?

(a) We will not impose a penalty against a Tribe if it is determined that the Tribe had reasonable cause for failure to meet the requirements listed at § 286.170(a)(1), § 286.170(a)(2) or § 286.170(a)(3). The general factors a Tribe may use to claim reasonable cause include but are not limited to the following:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant that the Tribe failed to meet a requirement.

(2) Formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure, or guidance that was issued after a Tribe implemented the requirements of the Act based on a different, but reasonable, interpretation of the Act.

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) In addition to the general reasonable cause criteria specified in paragraph (a) of this section, a Tribe may also submit a request for a reasonable cause exemption from the requirement to meet its work participation requirements in the following situation:

(1) We will consider that a Tribe has reasonable cause it demonstrates that its failure to meet its work participation rate(s) is attributable to its provisions with regard domestic violence as follows:

(i) To demonstrate reasonable cause, a Tribe must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (i.e., when cases with good cause waivers are removed from the calculation in § 286.80; and

(ii) A Tribe must grant good cause in domestic violence cases appropriately, in accordance with the policies in the Tribe's approved Tribal Family Assistance Plan.

(2) [Reserved]

§ 286.205 What if a Tribe does not have reasonable cause for failing to meet a requirement?

(a) To avoid the imposition of a penalty under § 286.170(a)(1), § 286.170(a)(2) or § 286.170(a)(3), under the following circumstances a Tribe must enter into a corrective compliance plan to correct the violation:

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in § 286.195(a) to submit its corrective compliance plan to us.

(c) A Tribe that unsuccessfully claims reasonable cause will have 60 days from receipt of the second notice described in § 286.195(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

§ 286.210 What penalties cannot be excused?

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting from other penalties that have been imposed.

(b) [Reserved]

§ 286.215 How can a Tribe appeal our decision to take a penalty?

(a) We will formally notify the Tribe that we will reduce the Tribe's TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe's appeal must include all briefs and supporting documentation for its case when it files its appeal. A copy of the appeal must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 30 days after the Tribe files its appeal.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal if filed.

(g)(1) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(2) If the Board requires additional documentation to reach its decision, the 60 days will be tolled for a reasonable period, specified by the Board, to allow production of the documentation.

(h)(1) A Tribe may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court's review will be based on the documents and supporting data submitted to the Board.

Subpart E—Data Collection and Reporting Requirements

§ 286.220 What data collection and reporting requirements apply to Tribal TANF programs?

(a) Section 412(h) of the Act makes section 411 regarding data collection and reporting applicable to Tribal TANF programs. This section of the regulations explains how we will collect the information required by section 411 of the Act and information to implement section 412(c) (work participation requirements).

(b) Each Tribe must collect monthly and file quarterly data on individuals and families as follows:

(1) Disaggregated data collection and reporting requirements in this part apply to families receiving assistance and families no longer receiving assistance under the Tribal TANF program; and

(2) Aggregated data collection and reporting requirements in this part apply to families receiving, families applying for, and families no longer receiving assistance under the Tribal TANF program.

(c) Each Tribe must file in its quarterly TANF Data Report and in the quarterly TANF Financial Report the specified data elements.

(d) Each Tribe must also submit an annual report that contains specified information.

(e) Each Tribe must submit the necessary reports by the specified due dates.

§ 286.225 What definitions apply to this subpart?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at § 286.5 apply to this subpart.

(b) For data collection and reporting purposes only, *TANF family* means:

(1) All individuals receiving assistance as part of a family under the Tribe's TANF program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 286.230 What quarterly reports must the Tribe submit to us?

(a) *Quarterly reports.* Each Tribe must collect on a monthly basis, and file on a quarterly basis, the data specified in the Tribal TANF Data Report and the Tribal TANF Financial Report.

(b) *Tribal TANF Data Report.* The Tribal TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each Tribe must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two).[1] These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each Tribe must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance.[2] This section of the Report asks for aggregate figures in the following areas: The total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The Tribal TANF Financial Report.* (1) Each Tribe must file quarterly expenditure data on the Tribe's use of Tribal Family Assistance Grant funds, any Tribal contributions, and State contributions. The report must be submitted on a form prescribed by ACF.

(2) In addition, each Tribe must file annually with the fourth quarter Tribal TANF Financial Report definitions and descriptive information on the Tribe's TANF program.

(3) If a Tribe makes a substantive change in its definition of work activities, its description of transitional services provided to families no longer receiving assistance due to employment under the Tribal TANF program, or how it reduces the amount of assistance when an individual refuses to engage in work, as specified in § 286.130, it must file a copy of the changed definition or description with the next quarterly report. The Tribe must also indicate the effective date of the change.

§ 286.235 May Tribes use sampling and electronic filing?

(a)(1) Each Tribe may report disaggregated data on all recipient families (universal reporting) or on a sample of families selected through the use of a scientifically acceptable sampling method. The sampling method must be approved by ACF in advance of submitting reports.

(2) Tribes may not use a sample to generate the aggregated data.

(b) "Scientifically acceptable sampling method" means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample, and the sample size requirements are met.

(c) Each Tribe may file quarterly reports electronically, based on format specifications which we will provide. Tribes who do not have the capacity to submit reports electronically may submit quarterly reports on a disk or in hard copy.

§ 286.240 When are quarterly reports due?

(a) Each Tribe must submit (ie., postmarked) its Tribal TANF Data Report and Tribal TANF Financial Report, including the addendum to the fourth quarter Financial Report, within 45 days following the end of quarter. If the 45th day falls on a weekend or national holiday, the reports are due no later than the next business day.

(b) The first reports required to be submitted must cover the period that begins six months after the date of implementation of the Tribal TANF program.

§ 286.245 What happens if the Tribe does not satisfy the quarterly reporting requirements?

(a)(1) If we determine that a Tribe has not submitted to us a complete and accurate Tribal TANF Data Report within the time limit, the Tribe risks the imposition of a penalty at § 286.180 related to the work participation rate targets since the data from the Tribal TANF Data Report is required to calculate participation rates.

(2) Non-reporting of the Tribal TANF Financial Report may give rise to a penalty under § 286.175—use of TANF funds in violation of part IV–A of the Act.

(b) [Reserved]

§ 286.250 What information must Tribes file annually?

(a) Each Tribe must file annually, as an addendum to the fourth quarter Tribal TANF Financial Report, the following definitions and information with respect to the Tribal TANF program for that year:

(1) The number of families excluded from the calculations at §§ 286.80 and 286.110 of this chapter because of the Tribe's definition of families receiving assistance, together with the basis for such exclusions;

(2) The Tribe's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) A description of how a Tribe will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause.

(b) Each Tribe must file an annual program and performance report that provides information about the characteristics and achievements of the Tribal program; the design and operation of the program; the services, benefits, assistance provided; the eligibility criteria; and the extent to which the Tribe has met its goals and objectives for the program. Each Tribe

[1] See Appendices A and B to this part for the specific data elements we are proposing.

[2] See Appendix C to this part for the specific data elements we are proposing.

may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for the Department's annual report to Congress.

§ 286.255 When are annual reports due?

(a) The annual report of Tribal definitions and expenditures required by § 286.250 is due (ie., postmarked) at the same time as the fourth quarter Tribal TANF Financial Report.

(b) The annual program and performance report to meet the requirements of section 411(b) of the Act (report to Congress) is due 90 days after the end of the fiscal year. The first report, covering FY 1998, is due December 30, 1998.

§ 286.260 How do the data collection and reporting requirements affect Public Law 102–477 Tribes?

(a) A Tribe that consolidates its Tribal TANF program into a Public-Law 102–477 plan is required to comply with the TANF data collection and reporting requirements of this section.

(b) A Tribe that consolidates its Tribal TANF program into a Public-Law 102–477 plan may submit the Tribal TANF Data Reports and the Tribal TANF Financial Report to the BIA, with a copy to us.

Appendix A—Tribal TANF Data Report—Section One; Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Tribal grantees should leave this field blank.

2. *County FIPS Code:* Tribal grantees should leave this field blank.

3. *Tribal Code:* Tribal grantees should enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a Tribe that could sample but opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the Tribe's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a Tribe may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the Tribal grantee to uniquely identify the case after formal approval to receive assistance.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:* For Tribes that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the Tribe does not bifurcate its caseload, enter code "1."

1 = Funded, in whole or in part, with Federal TANF block grant funds
2 = Funded entirely from State-only funds which are subject to TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." Tribes are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1 = Data collection completed
2 = Not subject to data collection/listed in error

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month for which the TANF family has received TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1 = Yes, a newly-approved application
2 = No

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the Tribe's TANF Program during the reporting month.

12. *Type of Family for Work Participation:*

Guidance: This data element will be used to identify the type of family (i.e., the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. A noncustodial parent, who lives in the State, may participate in work activities funded under the Tribal TANF Program and receive other assistance. In order for the noncustodial parent to participate in work activities and receive assistance, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family. However, for Tribes with both a one-parent and a two-parent work participation rate, it is up to the Tribe to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1 = Single-Parent Family for participation rate purposes
2 = Two-Parent Family for participation rate purposes
3 = No Parent Family for participation rate purposes (does not include parents, care-taker relatives, or minor child heads-of-household)

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1 = Public housing
2 = HUD rent subsidy
3 = Other rent subsidy
4 = No housing subsidy

14. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (i.e., a certified recipient of) medical assistance under a State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under a State plan approved under Title XIX.

1 = Yes, is eligible to receive medical assistance
2 = No

15. *Receives Food Stamps:*

If the TANF family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1 = Yes, Food Stamp coupon allotment
2 = Yes, cash
3 = Yes, wage subsidy
4 = No

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that

most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

17. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, Subsidized Child Care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1 = Yes, funded under the Tribal or State TANF Program
2 = Yes, funded under the Child Care and Development Fund
3 = Yes, funded under another Federal program (e.g., SSBG)
4 = Yes, funded under a Tribal, State, or local program
5 = No

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

19. *Amount of Child Care Disregard:* Enter the total dollar amount of the TANF family's actual disregard allowed for child care expenses during the reporting month. If there is no child care disregard, enter "0" as the amount.

20. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the TANF family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the Tribe, the State or the family.

21. *Amount of the Family's Cash Resources:* Enter the total dollar amount of the TANF family's cash resources for the reporting month.

Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance under the Tribal TANF Program:

Guidance: Assistance means every form of support provided to TANF families under the Tribal TANF Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) One-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the Tribal TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the Tribe's TANF program. If, for a "type of assistance", no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance", no assistance has been received (since the Tribe began its TANF Program) by the TANF eligible family, enter "0" as the number of months of assistance.

22. *Cash and Cash Equivalents:*
A. *Amount*
B. *Number of Months*
23. *Educational:*
A. *Amount*
B. *Number of Months*
24. *Employment Services:*
A. *Amount*
B. *Number of Months*
25. *Work Subsidies:*
A. *Amount*
B. *Number of Months*
26. *TANF Child Care:*

Guidance: Include only the child care funded directly by the Tribal TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

A. *Amount*
B. *Number of Months*
27. *Transportation:*
A. *Amount*
B. *Number of Months*
28. *Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:*
A. *Amount*
B. *Number of Months*
29. *Transitional Services:*
A. *Amount*
B. *Number of Months*
30. *Contributions to Individual Development Accounts:*
A. *Amount*
B. *Number of Months*
31. *Other:*
A. *Amount*
B. *Number of Months*

Reason for and Amount of Reduction in Assistance

For each reason for which the TANF family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter "0."

32. *Work Requirements Sanction.*
33. *Family Sanction for an Adult with No High School Diploma or Equivalent.*
34. *Sanction for Teen Parent not Attending School.*
35. *Non-Cooperation with Child Support.*
36. *Failure to Comply with an Individual Responsibility Plan.*
37. *Other Sanction.*
38. *Recoupment of Prior Overpayment.*
39. *Family Cap.*
40. *Reduction Based on Family Moving into Tribe's Service Area from Another TANF Program (Tribal or State).*
41. *Reduction Based on Length of Receipt of Assistance.*
42. *Other, Non-sanction.*
43. *Waiver Evaluation Research Group:*

Guidance: Tribal grantees should leave this field blank.

44. *Is the TANF Family Exempt from the Federal Time Limit Provisions:*

Guidance: Under Tribal TANF rules, an eligible family that does not include an adult (or minor child head-of-household) recipient, who has received assistance for the maximum number of months approved in the Tribe's TANF plan, may continue to receive assistance. A countable month is a month of assistance for which the adult (or minor child head-of-household) is not exempt from the Federal time limit provisions. Proposed Tribal TANF rules provide for two categories of exceptions. First, a family which does not include an adult (or minor child head-of-household) who has received the maximum number of months of countable assistance approved in the Tribe's TANF plan may be exempt from the accrual of months of assistance (i.e., clock not ticking). Second, a family with an adult (or minor child head-of-household), who has received the maximum months of countable assistance approved in the Tribe's TANF plan may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption which allows up to 20% of the families to receive assistance beyond the approved time limit.

Instruction: If the TANF family has no exemption from the Tribe's approved time limit, enter code "1." If the TANF family does not include an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months and is exempt from accrual of months of assistance under the Tribe's approved time limit for the reporting month, enter "2", "3", or "4", whichever is appropriate. Tribe's should not enter "5".

If the TANF family includes an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months and the family is exempt from termination of assistance, enter code "6", "7" "8" or "9", whichever is appropriate. Tribe's should not enter "10" or "11".

01=Family is not exempt from Tribe's approved time limit.

Family does not include an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months.

02=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because no adult or minor child head-of-household in eligible family receiving assistance.
03=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because assistance to family is funded entirely from State-only funds.

04=Yes, family is exempt from accrual of months under the Tribe's approved time limit for the reporting month because the family is living in Indian country or in an Alaska Native village in which at least 50 percent of whose adults are not employed.

05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved waiver policy.

Family includes an adult (or minor child head-of-household) who has received assistance for the maximum number of countable months under the Tribe's approved time limit.

06=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month because assistance to family is funded entirely from State-only funds.

07=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month due to a temporary good cause domestic violence waiver (and an inability to work).

08=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month due to a hardship exemption for reason other than domestic violence.

09=Yes, family is exempt from termination of assistance under the Tribe's approved time limit for the reporting month because the adult's (minor child head-of-household's) residence is in Indian country or in an Alaska Native village in which at least 50 percent of whose adults are not employed.

10 = Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers.

11 = Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers (i.e., adult-only time limit).

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the Tribal TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

45. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household.

2 = Parent of minor child in the eligible family receiving assistance

3 = Caretaker relative of minor child in the eligible family receiving assistance

4 = Minor sibling of child in the eligible family receiving assistance

5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

46. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent, who lives in the State, may participate in work activities funded under the Tribal TANF Program. In order for the noncustodial parent to participate in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1 = Yes, a noncustodial parent
2 = No

47. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the Tribal TANF Program in the format YYYYMMDD.

48. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

49. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1 = White, not of Hispanic origin
2 = Black, not of Hispanic origin
3 = Hispanic
4 = American Indian or Alaska Native
5 = Asian or Pacific Islander
6 = Other
9 = Unknown

50. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1 = Male
2 = Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

51. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1 = Yes, received Federal disability insurance
2 = No

52. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status
2 = No

53. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1 = Yes, received aid under Title XIV–APDT
2 = No

54. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-AABD for the reporting month.

1 = Yes, received aid under Title XVI–AABD
2 = No

55. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1 = Yes, received aid under Title XVI–SSI
2 = No

56. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1 = Single, never married
2 = Married, living together
3 = Married, but separated
4 = Widowed
5 = Divorced

57. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-

household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code "01."

01 = Head of household
02 = Spouse
03 = Parent
04 = Daughter or son
05 = Stepdaughter or stepson
06 = Grandchild or great grandchild
07 = Other related person (brother, niece, cousin)
08 = Foster child
09 = Unrelated child
10 = Unrelated adult

58. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1 = Yes, a teen parent
2 = No

Educational Level

Educational level is divided into two parts: The highest level of education attained and the highest degree attained.

59. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00 = No formal education
01–12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

60. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0 = No degree
1 = High school diploma, GED, or National External Diploma Program
2 = Awarded Associate's Degree
3 = Awarded Bachelor's Degree
4 = Awarded graduate degree (Master's or higher)
5 = Other credentials (degree, certificate, diploma, etc.)

61. Citizenship/Alienage:

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) Use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: Individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at Tribal/State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01 = U.S. citizen, including naturalized citizens
02 = Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04 = Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at Tribal Option

05 = Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07 = Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08 = Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09 = Any alien who is not a qualified alien.

Status Unknown

99 = Unknown

62. *Number of Months Countable toward Tribe's Approved Federal Time Limit in Own Tribe:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal time limit based on assistance received from the Tribe.

63. *Number of Months Countable toward Federal Time Limit in Other Tribes or States:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal time limit based on assistance received from other Tribes or States.

64. *Number of Countable Months Remaining Under Tribe's Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit.

65. *Is Current Month Exempt from the Tribe's Time Limit:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from Tribe's time limit.

1 = Yes, adult (or minor child head-of-household) is exempt from the Tribe's time limit for the reporting month
2 = No

66. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1 = Employed
2 = Unemployed, looking for work
3 = Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers)

67. *Work Participation Status:*

Guidance: Disregarded from the participation rate means the TANF family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (i.e., good cause exception); however, the TANF family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status. Tribes should not enter codes xxx.

01 = Disregarded from participation rate, single custodial parent with child under 12 months
02 = Disregarded from participation rate because all of the following apply: Required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period
03 = Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under Section 1115 of the Social Security Act
04 = Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate
05 = Exempt, single custodial parent with child under age 6 and unavailability of child care
06 = Exempt, disabled (not using an extended definition under a State waiver)
07 = Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)

08 = A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)
09 = Exempt, State waiver
10 = Exempt, other
11 = Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period
12 = Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period
13 = Required to participate, but not participating and not sanctioned for the reporting month
14 = Deemed engaged in work, teen head-of-household who maintains satisfactory school attendance
15 = Deemed engaged in work, single parent with child under age 6 and parent engaged in work activities for at least 20 hours per week
16 = Required to participate, participating but not meeting minimum participation requirements
17 = Required to participate, and meeting minimum participation requirements
99 = Not applicable (e.g., person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance)

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (e.g., the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (i.e., the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the Tribe may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training for each adult or minor child head-of-household may only count as a work activity for a total of 12 months unless the Tribe has been approved for either no limit or some other limit. For any adult (or minor child head-of-household) that has exceeded the limit, enter "0" as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under "Other."

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the Tribe's total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use "0" as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

68. *Unsubsidized Employment.*
69. *Subsidized Private Sector Employment.*
70. *Subsidized Public Sector Employment.*
71. *Work Experience.*
72. *On-the-job Training.*
73. *Job Search and Job Readiness Assistance.*
74. *Community Service Programs.*
75. *Vocational Educational Training.*
76. *Job Skills Training Directly Related to Employment.*
77. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.*
78. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency.*
79. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program.*
80. *Additional Work Activities Permitted Under Waiver Demonstration.*

Instruction: Not applicable to Tribal TANF programs.

81. *Other Work Activities.*

Guidance: Tribes should complete this element only if they have approved work activities that are other than the above.

82. *Required Hours of Work Under Waiver Demonstration:*

Guidance: Not applicable to Tribal TANF programs.

Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

83. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the Tribe counts the EITC as a resource, report it here as earned income in the month received. If the Tribe assumes an advance payment is applied for and obtained, only report what is actually received for this item.

84. *Wages, Salaries, and Other Earnings:*

Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

85. *Social Security:* Enter the dollar amount of Social Security that the adult in the Tribal TANF family has received for the reporting month.

86. *SSI:* Enter the dollar amount of SSI that the adult in the Tribal TANF family has received for the reporting month.

87. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the Tribal TANF family has received for the reporting month.

88. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the Tribal TANF family has received for the reporting month.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) Children

in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

89. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household.

2 = Parent of minor child in the eligible family receiving assistance
3 = Caretaker relative of minor child in the eligible family receiving assistance
4 = Minor sibling of child in the eligible family receiving assistance
5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

90. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the Tribal TANF Program in the format YYYYMMDD.

91. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

92. *Race:* Enter the one-digit code for the race of the TANF child.

1 = White, not of Hispanic origin
2 = Black, not of Hispanic origin
3 = Hispanic
4 = American Indian or Alaska Native
5 = Asian or Pacific Islander
6 = Other
9 = Unknown

93. *Gender:* Enter the one-digit code that indicates the child's gender.

1 = Male
2 = Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

94. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status
2 = No

95. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI-SSI for the reporting month.

1=Yes, received aid under Title XVI-SSI
2=No

96. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each person living in the household.)

01=Head-of-household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

97. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: The highest level of education attained and the highest degree attained.

98. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=no formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

99. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1 = High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

100. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 56.

101. *Cooperation with Child Support:* Enter the one-digit code that indicates this child's parent has cooperated with child support for this child.

1 = Yes, child's parent has cooperated with child support
2 = No
3 = Not applicable

Amount of Unearned Income

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

102. *SSI:* Enter the dollar amount of SSI that the child in the Tribal TANF family has received for the reporting month.

103. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the Tribal TANF family has received for the reporting month.

Child Care Reporting Section

Complete this section for each child in the TANF family for which a TANF child care subsidy is received (i.e., funded under the Tribal TANF Program). If child care is provided by more than one provider, enter the child care data for the greatest number of hours on the Primary Care line, and the next highest number of child care hours on the Secondary Care line.

104. *Type of Child Care:*

Definition: Provider types are divided into two broad categories of licensed/regulated and legally operating (no license category available in Tribe, State or locality). Under each of these categories are four types of providers: In-home, family home, group home, and centers. A relative provider is defined as one who is at least 18 years of age and who is a grandparent, great-grandparent, aunt or uncle, or sibling living outside the child's home.

Instruction: Enter the two-digit code indicating the type of care for each child. The following codes specify who cared for the child and where such care took place during the reporting month.

01 = Licensed/regulated in-home child care
02 = Licensed/regulated family child care
03 = Licensed/regulated group home child care
04 = Licensed/regulated center-based child care
05 = Legally operating (no license category available in Tribe, State or locality) in-home child care provided by a non-relative
06 = Legally operating (no license category available in Tribe, State or locality) in-home child care provided by a relative
07 = Legally operating (no license category available in Tribe, State or locality) family child care provided by a non-relative.
08 = Legally operating (no license category available in Tribe, State or locality) family child care provided by a relative
09 = Legally operating (no license category available in Tribe, State or locality) group child care provided by a non-relative
10 = Legally operating (no license category available in Tribe, State or locality) group child care provided by a relative

11 = Legally operating (no license category available in Tribe, State or locality) center-based child care

A. *Primary*
B. *Secondary*

105. *Total Monthly Cost of Child Care:* For each child receiving child care, enter the total dollar amount (round to the nearest dollar) that the provider charges for the service. Include both the fee the family pays and the child care subsidy.

A. Primary
B. Secondary

106. *Total Monthly Hours of Child Care Provided During the Reporting Month:* Enter the three-digit number for the total monthly number of child care hours provided for the reporting month.

Tribes may use their own formula to estimate the number of child care hours provided. If the Tribal or State payment system is based on daily or part day rates, the calculated number of hours of service would be based on the number of full or part days given in each week (as defined by the Tribe or State) multiplied by the number of hours for the full or part day. The calculated number should be reported as the actual number of hours provided.

Example

Full day = 8 hours
Part day = 5 hours
Care given = 3 full days and 2 part days
Actual hours of care provided = (3*8 + 2*5) = 34

A. *Primary*
B. *Secondary*

Appendix B—Tribal TANF Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Tribal grantees should leave this field blank.

2. *County FIPS Code:* Tribal grantees should leave this field blank.

3. *Tribal Code:* Tribal grantees should enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." Tribes with approved stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a Tribe uses a non-stratified sample design or opts to provide data for its entire caseload even though it is eligible to sample, enter the same stratum code (any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the Tribe's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a Tribe may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP Code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1 = Data collection completed
2 = Not subject to data collection/listed in error

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the Tribe's TANF Program in the prior month. A temporally suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (i.e., most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the TANF family no longer receiving assistance. Tribe's should not enter "7".

1 = Employment
2 = Marriage
3 = Time Limit
4 = Sanction
5 = Tribal policy
6 = Minor child absent from the home for a significant time period
7 = Transfer to Separate State MOE Program
8 = Other

10. *Number of Family Members:* Enter two digits that represent the number of members in the family, which received assistance under the Tribe's TANF Program.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1 = Public housing
2 = HUD rent subsidy
3 = Other rent subsidy
4 = No housing subsidy

12. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (i.e., a certified recipient of) medical assistance under a State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under a State plan approved under Title XIX.

1 = Yes, is eligible to receive medical assistance
2 = No

13. *Receives Food Stamps:* If the TANF family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1 = Yes, Food Stamp coupon allotment
2 = Yes, cash
3 = Yes, wage subsidy
4 = No

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1 = Yes, funded under the Tribal TANF Program
2 = Yes, funded under the Child Care and Development Fund
3 = Yes, funded under another Federal program (e.g., SSBG)
4 = Yes, funded under a Tribal, State, or local program
5 = No

16. *No Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, Tribal, State or local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not

attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the TANF family. A minor child head-of-household should be coded as an adult. For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the Tribal TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) The head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

17. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household.

2 = Parent of minor child in the eligible family receiving assistance
3 = Caretaker relative of minor child in the eligible family receiving assistance
4 = Minor sibling of child in the eligible family receiving assistance
5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

18. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under TANF in the format YYYYMMDD.

19. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

20. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1 = White, not of Hispanic origin
2 = Black, not of Hispanic origin
3 = Hispanic
4 = American Indian or Alaska Native
5 = Asian or Pacific Islander
6 = Other
9 = Unknown

21. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1 = Male
2 = Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

22. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1 = Yes, received Federal disability insurance
2 = No

23. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status
2 = No

24. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1 = Yes, received aid under Title XIV–APDT
2 = No

25. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1 = Yes, received aid under Title XVI–AABD
2 = No

26. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1 = Yes, received aid under Title XVI-SSI
2 = No

27. *Marital Status:* Enter the one-digit code for the marital status of the recipient.

1 = Single, never married
2 = Married, living together
3 = Married, but separated
4 = Widowed
5 = Divorced

28. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01."

01 = Head of household
02 = Spouse
03 = Parent
04 = Daughter or son
05 = Stepdaughter or stepson
06 = Grandchild or great grandchild
07 = Other related person (brother, niece, cousin)
08 = Foster child
09 = Unrelated child
10 = Unrelated adult

29. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1 = Yes, a teen parent
2 = No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

30. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00 = No formal education
01–12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

31. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0 = No degree
1 = High school diploma, GED, or National External Diploma Program
2 = Awarded Associate's Degree
3 = Awarded Bachelor's Degree
4 = Awarded graduate degree (Master's or higher)
5 = Other credentials (degree, certificate, diploma, etc.)

32. *Citizenship/Alienage:*

Guidance: As described in TANF-ACF-PA–97–1, States have the flexibility to: (1) Use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/

alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01 = U.S. citizen, including naturalized citizens
02 = Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04 = Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at State Option

05 = Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06 = Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07 = Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08 = Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09 = Any alien who is not a qualified alien.

Status Unknown

99 = Unknown

33. *Number of Months Countable toward Tribe's Time Limit in Own Tribe:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the Tribe.

Number of Months Countable toward Tribe's Time Limit in Other Tribes or States: Enter the number of months countable toward the adult's (or minor child head-of-household's) Tribal time limit based on assistance received from other Tribes or States.

Number of Countable Months Remaining Under Tribe's Time Limit: Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) Tribal time limit.

36. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1 = Employed
2 = Unemployed, looking for work
3 = Not in labor force (i.e, unemployed, not looking for work, includes discouraged workers)

Amount of Earned Income

For each category of earned income, enter the amount of the adult's (or minor child head-of-household's) earned income.

37. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the Tribe counts the EITC as a resource, report it here as earned income in the month received. If the Tribe assumes an advance payment is applied for and obtained, only report what is actually received for this item.

38. Wages, Salaries, and Other Earnings:

Amount of Unearned Income

39. *Unearned Income:* Enter the amount of the adult's (or minor child head-of-household's) unearned income.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) Children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

40. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1 = Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household.

2 = Parent of minor child in the eligible family receiving assistance
3 = Caretaker relative of minor child in the eligible family receiving assistance
4 = Minor sibling of child in the eligible family receiving assistance
5 = Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

41. *Date of Birth:* Enter the eight-digit code for date of birth for this child under TANF in the format YYYYMMDD.

42. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

43. *Race:* Enter the one-digit code for the race of the TANF child.

1 = White, not of Hispanic origin
2 = Black, not of Hispanic origin
3 = Hispanic
4 = American Indian or Alaska Native
5 = Asian or Pacific Islander
6 = Other
9 = Unknown

44. *Gender:* Enter the one-digit code that indicates the child's gender.

1 = Male
2 = Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

45. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1 = Yes, received benefits based on Federal disability status
2 = No

46. *Receives Aid Under Title XVI-SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI-SSI for the reporting month.

1 = Yes, received aid under Title XVI-SSI
2 = No

47. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the Tribe, (i.e., the

relationship to the principal person of each person living in the household.)

01 = Head of household
02 = Spouse
03 = Parent
04 = Daughter or son
05 = Stepdaughter or stepson
06 = Grandchild or great grandchild
07 = Other related person (brother, niece, cousin)
08 = Foster child
09 = Unrelated child
10 = Unrelated adult

48. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1 = Yes, a teen parent
2 = No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

49. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00 = No formal education
01–12 = Grade level completed in primary/secondary school including secondary level vocational school or adult high school

50. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0 = No degree
1 = High school diploma, GED, or National External Diploma Program
2 = Awarded Associate's Degree
3 = Awarded Bachelor's Degree
4 = Awarded graduate degree (Master's or higher)
5 = Other credentials (degree, certificate, diploma, etc.)
9 = Not applicable

51. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 27, on page xxx.

52. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

1 = Yes, child's parent has cooperated with child support
2 = No, child's parent has not cooperated with child support
3 = Not applicable

53. *Unearned Income:* Enter the dollar amount of the child's unearned income.

Appendix C—Tribal TANF Data Report—Section Three Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe. (A complete listing of Tribal Codes will be furnished to Tribes.)

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January–March
Second quarter—April–June
Third quarter—July–September
Fourth quarter—October–December

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., first quarter of 1997 is entered as "19971").

Applications

Guidance: The term "application" means the action by which an individual indicates in writing to the agency administering the Tribal TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (i.e., cases funded under the TANF block grant as cases receiving assistance under the Tribal TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the Tribal TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the Tribal TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. First Month:
B. Second Month:
C. Third Month:

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the Tribal TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. First Month:
B. Second Month:
C. Third Month:

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

16. *Total Number of Minor Child Heads-of-Household:* Enter the total number of minor child head-of-household families receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

17. *Total Number of Births:* Enter the total number of births for families receiving

assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

18. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the Tribal TANF Program for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

Closed Cases

19. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. First Month:
B. Second Month:
C. Third Month:

Appendix D—Sampling Specifications

1. Sample Methodology

The sample methodology must conform to principles of probability sampling, i.e., each family in the population of interest must have a known, non-zero probability of selection and computational methods of estimation must lead to a unique estimate. The Tribe must construct a sample frame for each month in the annual sample period and must select approximately one-twelfth of the required minimum annual sample size from each monthly sample frame.

The recommended method of sample selection is stratified systematic random sampling.

2. Sample Frame Requirements for

a. *families receiving assistance under the Tribal TANF Program (i.e., the active TANF sample) are:*

The monthly TANF sample frame must consist of an unduplicated list of all families who receive assistance under the Tribal TANF Program for the reporting month by the end of the reporting month. Only families with a minor child who resides with a custodial parent or other adult relative or a pregnant woman may receive assistance.

b. *families no longer receiving assistance under the Tribal TANF Program (i.e., the closed TANF sample) are:*

For closed cases, the monthly TANF sample frame must consist of an unduplicated list of all families who received assistance under the Tribal TANF Program who were terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the Tribe's TANF Program in the prior month.

3. Sample Size Requirement

a. *for families receiving assistance under the Tribe's TANF Program are:*

The minimum required annual sample size for families receiving assistance is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF families. We established the minimum required sample sizes to provide reasonably precise estimates (e.g., a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of newly, approved TANF families and all TANF families.

b. *for families no longer receiving assistance under the Tribe's TANF Program are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (i.e., closed cases) is 800 families.

What Must Tribes Submit to ACF?

Each Tribe that meets the sampling criteria and opts to sample its caseloads must submit the following:

a. Each Tribe must submit for approval its annual sampling plan or any changes to its currently approved sampling plan at least sixty (60) calendar days before the start of the annual period. If the Tribe's sampling plan is unchanged from the previous year, the Tribe is not required to resubmit the sampling plan. The sampling plan must satisfy the requirements for plan approval as specified in Section 1300 of the TANF Sampling and Statistical Methods Manual and includes the following:

i. Documentation of methods for constructing and maintaining the sample frame(s), including assessment of frame completeness and any potential problems associated with using the sample frame(s);

ii. Documentation of methods for selecting the sample cases from the sample frame(s); and

iii. Documentation of methods for estimating case characteristics and their sampling errors, including the computation of weights, where appropriate.

b. Each Tribe must submit the estimated average monthly caseload for the annual sample period and the computed sample interval (if applicable) to the ACF Regional Administrator thirty (30) calendar days before the beginning of the annual sample period, i.e., by September 1 for the October sample selection. Tribes must submit the monthly list of selected sample cases (including reserve pool cases, if applicable) within 10 days of the date of selection specified in the Tribe's sampling plan.

c. Each Tribe must submit the total number of families receiving assistance under the Tribe's TANF Program by stratum for each month in the annual sample period and the total number of families no longer receiving assistance under the Tribe's TANF Program (if stratified, by stratum) for each month in the annual sample period. This data is required for weighting the sample results in order to produce estimates for the entire caseload.

Appendix E.—Statutory Reference Table for Appendix A

Data elements	Justification
1. State FIPS Code	N/A for Tribal TANF programs.
2. County FIPS Code	411(a)(1)(A)(i).
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data	Items 6–44.
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Funding Stream	411(a)(1)(A)(xii): Use in calculation of participation rate.
9. Disposition	Implicit in administering data collection system.
10. New Applicant	411(b), requires the Secretary to report to Congress on families applying for TANF assistance. This element identifies applicants that are newly approved families receiving assistance.
11. Number of Family Members	411(a)(1)(A)(iv).
12. Type of Family for Work Participation	411(a)(1)(A)(xii): Use in calculation of participation rate.
13. Receives Subsidized Housing	411(a)(1)(A)(ix).
14. Receives Medical Assistance	411(a)(1)(A)(ix).
15. Receives Food Stamps	411(a)(1)(A)(ix).
16. Amount of Food Stamp Assistance	411(a)(1)(A)(ix).
17. Receives Subsidized Child Care	411(a)(1)(A)(ix).
18. Amount of Subsidized Child Care	411(a)(1)(A)(ix).

APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

Data elements	Justification
19. Amount of Child Care Disregard	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K (a)(2)(C)).
20. Amount of Child Support	411(a)(1)(A)(xiv): break-out of unearned income.
21. Amount of the Families' Cash Resources	411(b), requires the Secretary to report to Congress on financial circumstances of families receiving TANF assistance.
Amount of Assistance Received and Number of Months the Family Received Assistance by Type under the Tribal TANF Program.	Items 22—31 are types of assistance.
22. Cash and Cash Equivalents	411(a)(1)(A)(x)&(xiii).
23. Educational	411(a)(1)(A)(x)&(xiii).
24. Employment Services	411(a)(1)(A)(x)&(xiii).
25. Work Subsidies	411(a)(1)(A)(x)&(xiii).
26. TANF Child Care	411(a)(1)(A)(x)&(xiii).
27. Transportation	411(a)(1)(A)(x)&(xiii).
28. Other Supportive Services and Special Needs, Including Assistance with Meeting Home Heating and Air Conditioning Costs.	411(a)(1)(A)(x)&(xiii).
29. Transitional Services	411(a)(1)(A)(x)&(xiii).
30. Contributions to Individual Development Accounts	411(a)(1)(A)(x)&(xiii).
31. Other	411(a)(1)(A)(x)&(xiii).
Reason for and Amount of Reduction in Assistance	Items 32–42 are the reasons for reduction in assistance.
32. Work Requirements Sanction	411(a)(1)(A)(xiii).
33. Family Sanction for an Adult with No High School Diploma or Equivalent.	411(a)(1)(A)(xiii).
34. Sanction for Teen Parent Not Attending School	411(a)(1)(A)(xiii).
35. Non-Cooperation with Child Support	411(a)(1)(A)(xiii).
36. Failure to Comply with an Individual Responsibility Plan	411(a)(1)(A)(xiii).
37. Other Sanction	411(a)(1)(A)(xiii).
38. Recoupment of Prior Overpayment	411(a)(1)(A)(xiii).
39. Family Cap	411(a)(1)(A)(xiii).
40. Reduction Based on Family Moving into Tribe From Another State or Tribal TANF Program.	411(a)(1)(A)(xiii).
41. Reduction Based on Length of Receipt of Assistance	411(a)(1)(A)(xiii).
42. Other, Non-sanction	411(a)(1)(A)(xiii).
43. Waiver Evaluation Research Group	411(a)(1)(A)(xii): Use to calculate the participation rate for States with an ongoing waiver evaluation for impact analysis purposes. N/A to Tribal TANF programs.
44. Is the TANF Family Exempt from the Federal Time Limit	409(a)(9).
Adult Characteristics	Items 45–88.
45. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
46. Noncustodial Parent Indicator	411(a)(4): Report on Non-custodial Parents requires the number of non-custodial Parents. To provide assistance to non-custodial parents under the Tribal TANF Program, Tribes must include them in the family. Data could be collected under the element Relationship to Head-of-Household. Element was broken out to make the coding cleaner and easier for Tribes to report.
47. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
48. Social Security Number	This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).
49. Race	411(a)(1)(A)(vii).
50. Gender	Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	Items 51—55.
51. Receives Federal Disability Insurance Benefits	411(a)(1)(A)(ii) as revised by P.L. 105–33.
52. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
53. Receives Aid Under Title XIV-APDT	411(a)(1)(A)(ii) as revised by P.L. 105–33.
54. Receives Aid Under Title XVI-AABD	411(a)(1)(A)(ii) as revised by P.L. 105–33.
55. Receives Aid Under Title XVI-SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
56. Marital Status	411(a)(1)(A)(vi).
57.Relationship to Head-of-Household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
58. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Adult Educational Level	Items 59 and 60.
59. Highest Level of Education Attained	411(a)(1)(A)(vii).
60. Highest Degree Attained	411(a)(1)(A)(vii).
61. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect the complexity of TANF; also 409(a)(1).

APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

Data elements	Justification
62. Number of Months Countable toward Federal Time Limit in Own Tribe.	409(a)(9).
63. Number of Months Countable toward Federal Time Limit in Other States or Tribes.	409(a)(9).
64. Number of Countable Months Remaining Under Tribe's Time Limit	409(a)(9).
65. Is Current Month Exempt from the Tribe's Time Limit	409(a)(9).
66. Employment Status	411(a)(1)(A)(v).
67. Work Participation Status	411(a)(1)(A)(xii): Needed to calculate the work participation rate.
Adult Work Participation Activities	Items 68—81 are the work participation activities and are needed to calculate the work participation rate.
68. Unsubsidized Employment	411(a)(1)(A)(xi)(III).
69. Subsidized Private Sector Employment	411(a)(1)(A)(xi)(II).
70. Subsidized Public Sector Employment	411(a)(1)(A)(xi)(IV).
71 Work Experience	411(a)(1)(A)(xi)(IV).
72. On-the-job Training	411(a)(1)(A)(xi)(VI).
73. Job Search and Job Readiness Assistance	411(a)(1)(A)(xi)(V).
74. Community Service Programs	411(a)(1)(A)(xi)(IV).
75. Vocational Educational Training	411(a)(1)(A)(xi)(VII).
76. Job Skills Training Directly Related to Employment	411(a)(1)(A)(xi)(VI).
77. Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
78. Satisfactory School Attendance for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
79. Providing Child Care Services to an Individual who is Participating in a Community Service Program.	411(a)(1)(A)(xi).
80. Additional Work Activities Permitted Under Waiver	411(a)(1)(A)(xii): Use to calculate work participation rate, when approved 1115 waiver permits other work activities.
81. Other Work Activities	Related to 411(a)(1)(A)(xii) and 409(a)(3).
82. Required Hours of Work Under Waiver	411(a)(1)(A)(xii): Use to calculate the Work participation rate, when approved 1115 waiver permits a different number of hours of work participation to count as engaged in work.
Adult Earned Income	Items 83 and 84 break out earned income.
83. Earned Income Tax Credit (EITC)	411(a)(1)(A)(v).
84. Wages, Salaries, and Other Earnings	411(a)(1)(A)(v).
Adult Unearned Income	Items 85 and 88 break out Unearned income.
85. Amount of Social Security	411(a)(1)(A)(xiv).
86. Amount of SSI	411(a)(1)(A)(xiv).
87. Amount of Worker's Compensation	411(a)(1)(A)(xiv).
88. Amount of Other Unearned Income	411(a)(1)(A)(xiv).
Child Characteristics	Items 89–109.
89. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
90. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
91. Social Security Number	This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).
92. Race	411(a)(1)(A)(viii).
93. Gender	Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	
94. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
95. Receives Aid Under Title XVI–SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
96. Relationship to Head-of-household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
97. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Child Educational Level	Items 101 and 102.
98. Highest Level of Education Attained	411(a)(1)(A)(viii).
99. Highest Degree Attained	411(a)(1)(A)(viii).
100. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect TANF; also 409(a)(1).
101. Cooperation with Child Support	409(a)(5).
Child Unearned Income	Items 105 and 106.
102. Amount of SSI	411(a)(1)(A)(xiv).
103. Amount of Other Unearned Income	411(a)(1)(A)(xiv)—rather than breaking out unearned income into its parts, we ask for an indicator that the recipient has certain types of unearned income.
Child Care Reporting Section	Items 107–109.

APPENDIX E.—STATUTORY REFERENCE TABLE FOR APPENDIX A—Continued

Data elements	Justification
104. Type of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K (a)(2)(C).
105. Total Monthly Cost of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K (a)(2)(C)). The Total Amount of the Child Care Subsidy (required by 411 (a)) may be derived from this item and the total Monthly cost of child Care.
106. Total Monthly Hours of Child Care Provided During the Reporting Month.	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K (a)(2)(C).

APPENDIX F—STATUTORY REFERENCE TABLE FOR APPENDIX B

Data elements	Justification
1. State FIPS Code	N/A for Tribal TANF programs.
2. County FIPS Code	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data	Items 6–16.
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Disposition	Implicit in administering data collection system.
9. Reason for Closure	411(a) (1) (A) (xvi).
10. Number of Family Members	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
11. Receives Subsidized Housing	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
12. Receives Medical Assistance	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
13. Receives Food Stamps	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
14. Amount of Food Stamp Assistance	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
15. Receives Subsidized Child Care	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
16. Amount of Subsidized Child Care	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
Adult Characteristics	Items 17–39.
17. Family Affiliation	Needed to identify persons in Tribe-defined family and other individuals living in the household.
18. Date of Birth	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
19. Social Security Number	This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).
20. Race	411(b): Use to construct comparable statistics based on 411 (a) (1) (A), for families receiving assistance.
21. Gender	Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	Items 22–26.
22. Receives Federal Disability Insurance Benefits	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
23. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
24. Receives Aid Under Title XIV–APDT	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
25. Receives Aid Under Title XVI–AABD	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
26. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

APPENDIX F—STATUTORY REFERENCE TABLE FOR APPENDIX B—Continued

Data elements	Justification
27. Marital Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
28. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
29. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Educational Level	Items 30 and 31.
30. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
31. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
32. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
33. Number of Months Countable toward Federal Time Limit in Own Tribe.	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
34. Number of Months Countable toward Federal Time Limit in Other Tribes or States.	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
35. Number of Countable Months Remaining Under Tribe's Time Limit	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
36. Employment Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Earned Income	Items 37 and 38 break out earned income.
37. Earned Income Tax Credit (EITC)	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
38. Wages, Salaries, and Other Earnings	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
39. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Characteristics	Items 40–52.
40. Family Affiliation	Needed to identify persons in Tribe-defined family and other individuals living in the household.
41. Date of Birth	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
42. Social Security Number	This information is also readily available. We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (i.e., to track individual members of the TANF family).
43. Race	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
44. Gender	Data could be collected under the element Relationship to Head-of-Household (e.g., husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for Tribes to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	Items 45–49.
45. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
46. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
47. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
48. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Educational Level	Items 52 and 53.
49. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
50. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
51. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
52. Cooperation with Child Support	411(b): Use to construct comparable statistics based on 409(a)(5), for families receiving assistance.
53. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

APPENDIX G.—STATUTORY REFERENCE TABLE FOR APPENDIX C

Data elements	Statutory basis
1. State FIPS Code	N/A for Tribal TANF programs.
2. Tribal Code	Implicit in administering data collection system.
3. Calendar Quarter	Implicit in administering data collection system.

APPENDIX G.—STATUTORY REFERENCE TABLE FOR APPENDIX C—Continued

Data elements	Statutory basis
4. Total Number of Applications	411 (b): Use in Report to Congress.
5. Total Number of Approved Applications	411 (a): Implicit in use of samples. Needed to weight sample data report for the newly, approved applicants portion of the sample.
	411 (b): Use in Report to Congress.
6. Total Number of Denied Applications	411 (b): Use in Report to Congress.
7. Total Amount of Assistance	411 (a) (6) as revised by P.L. 105–33.
8. Total Number of Families	411 (a) (6) as revised by P.L. 105–33.
	407 (b) (3): Use in calculation of caseload reduction for adjusting the participation rate standard.
	411 (a): Implicit in use of samples to weight Tribe data to national totals.
9. Total Number of Recipients	411 (a) (6) as revised by P.L. 105–33.
10. Total Number of Adult Recipients	411 (a) (6) as revised by P.L. 105–33.
11. Total Number of Child Recipients	411 (a) (6) as revised by P.L. 105–33.
12. Total Number of Two-Parent Families	411 (a) (6) as revised by P.L. 105–33.
	407 (b) (3): Use in calculation of caseload reduction for adjusting the participation rate standard.
13. Total Number of One-Parent Families	411 (a) (6) as revised by P.L. 105–33.
14. Total Number of No-Parent Families	411 (a) (6) as revised by P.L. 105–33.
15. Total Number of Non-custodial Parents Participating in Work Activities.	411 (a) (4).
16. Total Number of Minor Child Heads-of-Household	Used to test the reliability and representativeness of the sample.
	411 (b): Use in Report to Congress.
17. Total Number of Births	413 (e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births. N/A for Tribal TANF programs.
18. Total Number of Out-of-Wedlock Births	413 (e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births. N/A for Tribal TANF programs.
19. Total Number of Closed Cases	411 (a): Implicit in use of samples. Needed to weight sample data report for families no longer receiving assistance.

PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

Subpart A—General NEW Provisions

Sec.

Subpart B—Eligible Tribes

Subpart C—NEW Program Funding

Subpart D—Plan Requirements

Subpart E—Program Design and Operations

Subpart F—Data Collection and Reporting Requirements

Authority: 42 U.S.C. 612.

Subpart A—General NEW Provisions

§ 287.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 412(a)(2) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

(Pub. L. 104–193) and the Balanced Budget Act of 1997 (Pub. L. 105–33).

(b) Section 412(a)(2), as amended, authorizes the Secretary to issue grants to eligible Indian tribes to operate a program that makes work activities available to "such population and such service area or areas as the tribe specifies."

(c) We call this Tribal work activities program the Native Employment Works (NEW) program.

(d) These regulations specify the Tribes who are eligible to receive NEW program funding. They also prescribe requirements for: Funding; program plan development and approval; program design and operation; and data collection and reporting.

§ 287.5 What is the purpose and scope of the NEW program?

(a) The purpose of the NEW program is to provide eligible Indian tribes, including Alaska Native organizations, the opportunity to provide work activities and services to their needy clients in a flexible manner.

(b) The NEW programs will assist Indian tribes in achieving self-sufficiency for their clients, and in reducing and ending dependency of Tribal families on government benefits.

§ 287.10 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families;

Act means the Social Security Act, unless we specify otherwise;

Alaska Native organization means an Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is eligible to operate a Federal program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450);

Consortium means a group of Tribes working together for the same purpose and receiving consolidated NEW funding for that purpose.

Department means the Department of Health and Human Services;

Division of Tribal Services (DTS) means the unit in the Office of Community Services within the Department's Administration for Children and Families that has as its primary responsibility the administration of the Tribal family assistance program, called the Tribal Temporary Assistance for Needy Families (TANF) program, and the Tribal work program, called the Native Employment Works (NEW) program, as authorized by section 412(a);

Eligible Indian tribe means an Indian tribe, a consortium of Indian tribes, or an Alaska Native organization that operated a Tribal Job Opportunities and Basic Skills Training (JOBS) program in fiscal year 1995 under section 482(i), as in effect during that fiscal year;

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30;

FY means fiscal year;

Indian, Indian tribe, and Tribal organization—The terms "Indian", "Indian tribe", and "Tribal organization" have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

Native Employment Works Program means the Tribal work program under section 412(a)(2) of the Act;

NEW means the Native Employment Works Program;

Program Year means, for the NEW program, the 12-month period beginning on July 1 of the calendar year and ending on June 30;

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193;

Public Law 102–477 refers to the Indian Employment, Training and Related Services Demonstration Act of 1992, whose purpose is to provide for the integration of employment, training and related services to improve the effectiveness of those services;

Secretary means the Secretary of the Department of Health and Human Services;

State means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa;

TANF means the Temporary Assistance for Needy Families Program;

Temporary Assistance for Needy Families Program means a family assistance grant program operated either by a Tribe under section 412(a)(1) of the Act or by a State under section 403 of the Act;

Tribal TANF program means a Tribal program subject to the requirements of section 412 of the Act which is funded by TANF funds on behalf of eligible families;

We (and any other first person plural pronouns) refers to The Secretary of Health and Human Services, or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Subpart B—Eligible Tribes

§ 287.15 Which Tribes are eligible to apply for NEW program grants?

To be considered for a NEW Program grant, a Tribe must be an "eligible Indian tribe." An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in FY 1995.

§ 287.20 May a Public Law 102–477 Tribe operate a NEW program?

Yes, if the Tribe is an "eligible Indian tribe."

§ 287.25 May Tribes form a consortium to operate a NEW program?

(a) Yes, as long as each Tribe forming the consortium is an "eligible Indian tribe."

(b) To apply for and conduct a NEW program, the consortium must submit a plan to ACF.

(c) The plan must include a copy of a resolution from each Tribe indicating its membership in the consortium and authorizing the consortium to act on its behalf in regard to administering a NEW program.

§ 287.30 If an eligible consortium breaks up, what happens to the NEW program grant?

(a) If a consortium should break up or any Tribe withdraws from a consortium, it will be necessary to allocate unobligated funds and future grants among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW program.

(b) Each withdrawing Tribe must submit to ACF a copy of the Tribal resolution that confirms the Tribe's decision to withdraw from the consortium and indicates whether the Tribe elects to continue its participation in the program.

(c) The allocation can be accomplished by any method that is recommended and agreed to by the leaders of those Tribes.

(d) If no recommendation is made by the Tribal leaders or no agreement is reached, the Secretary will determine the allocation of funds based on the best available data.

Subpart C—NEW Program Funding

§ 287.35 What grant amounts are available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW program?

Each Tribe shall receive a grant in an amount equal to the amount received by the Tribe in FY 1994 under section 482(i) (as in effect during FY 1994).

§ 287.40 Are there any matching funds requirements with the NEW program?

No, Tribal grantees are not required to match NEW Federal funds.

§ 287.45 How can NEW program funds be used?

(a) NEW grants are for making work activities available to such population as the Tribe specifies.

(b) NEW funds can be used for work activities as defined by the Tribal grantee.

(c) Work activities may include supportive services necessary for assisting NEW program participants in preparing for, obtaining and/or retaining employment.

§ 287.50 What are the funding periods for NEW program grants?

NEW program funds are for operation of the NEW program for a 12-month period from July 1 through June 30.

§ 287.55 What time frames and guidelines apply regarding the obligation and liquidation periods for NEW program funds?

(a) NEW program funds provided for a FY are for use during the period July 1 through June 30 and must be obligated no later than June 30. Carry forward of an unobligated balance of NEW funds is not permitted. An unobligated NEW fund balance as of June 30 will be returned to the Federal government through the issuance of a negative grant award. Unobligated funds are to be reported on the SF–269A which Tribes must submit within 30 days after the funding period, i.e., no later than July 30.

(b) A Tribe must liquidate all obligations incurred under the New program grant awards not later than one year after the end of the obligation period, i.e., no later than June 30 of the following FY. An unliquidated balance at the close of the liquidation period will be returned to the Federal government through the issuance of a negative grant award. Unliquidated obligations are to be reported on the SF–269A which Tribes must submit within 90 days after the liquidation period, i.e., by September 28.

§ 287.60 Are there additional financial reporting and auditing requirements?

(a) The reporting of expenditures are generally subject to the requirements of 45 CFR 92.41.

(b) NEW program funds and activities are subject to the audit requirement of the Single Audit Act of 1984 (45 CFR 92.26).

(c) A NEW program grantee must comply with all laws, regulations and Departmental policies that govern submission of financial reports by recipients of Federal grants.

(d) Improper expenditure claims under this program are subject to disallowance.

(e) If a grantee disagrees with the Agency's decision to disallow funds, the grantee may follow the appeal procedures at 45 CFR Part 16.

§ 287.65 What OMB circulars apply to the NEW program?

NEW programs are subject to the following OMB circulars: A–87 "Cost Principles for State, Local, and Indian Tribal Governments" and A–133 "Audits of States and Local Governments."

Subpart D—Plan Requirements

§ 287.70 What are the plan requirements for the NEW program?

(a) To apply for and conduct a NEW program, a Tribe must submit a plan to ACF.

(b) The plan must identify the agency responsible for administering the NEW program and include a description of the following:

(1) Population to be served;

(2) Service area;

(3) Client services to be provided;

(4) Work activities to be provided;

(5) Supportive and job retention services to be provided;

(6) Anticipated program outcomes; and

(7) Coordination activities conducted and expected to be conducted with other programs and agencies.

(c) The plan must also describe how the Tribe will deliver work activities and services.

(d) The format is left to the discretion of each NEW Tribal grantee.

§ 287.75 When does the plan become effective?

(a) The Secretary required Tribes to submit an interim Tribal preprint, the "Native Employment Works Program Abbreviated Preprint", if they were offering NEW program services effective July 1, 1997. The preprint became operative July 1, 1997 and remained in effect to the end of the program year, June 30, 1998. Subsequent plans are three-year plans.

(b) The three-year plans must be submitted to the Secretary by a deadline to be established.

(c) The 1998 plan will cover program years 1998, 1999, and 2000. An approved plan for program year 1998 becomes operative on July 1, 1998, or upon approval by the Secretary, if later than July 1, 1998.

§ 287.80 What is the process for plan review and approval?

(a) A Tribe must submit its plan to the ACF Regional Office, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families, Attention: Native Employment Works Team.

(b) To receive funding by the beginning of the NEW program year (July 1), a Tribe must submit its plan by the established due date.

(c) ACF will complete its review of the plan within 45 days of receipt.

(d) After the plan review has occurred, ACF will approve the plan, certifying that the plan meets all necessary requirements. If the plan is not approvable, the Regional Office will notify the Tribe regarding additional action needed for plan approval.

§ 287.85 How is a NEW plan amended?

(a) If a Tribe makes substantial changes in its NEW program plan or operations, it must submit an amendment for the changed section(s) of the plan to the appropriate ACF Regional Office for review and approval, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration of Children and Families, Attention: Native Employment Works Team. The review will verify consistency with section 412(a)(2) of the Act.

(b) A substantial change is a change in the agency administering the NEW program, a change in the designated service area and/or population, or a change in work activities provided.

(c) A substantial change in plan content or operations must be reported to us no later than 45 days prior to the proposed implementation date.

(d) ACF will complete the review of the amended plan within 45 days of receipt.

(e) An amended plan becomes effective when it is approved by the Secretary.

§ 287.90 Are Tribes required to complete any certifications?

Yes. A Tribe must include in its NEW program plan any additional certifications that the Secretary prescribes in the planning guidance.

§ 287.95 May a Tribe operate both a NEW program and a Tribal TANF program?

Yes. However, the Tribe must adhere to statutory and regulatory requirements of the individual programs.

§ 287.100 Must a Tribe that operates both NEW and Tribal TANF programs submit two separate plans?

Yes. Separate plans are needed to reflect different program and plan requirements as specified in the statute and in plan guidance documents issued by the Secretary for each program.

Subpart E—Program Design and Operations

§ 287.105 What provisions of the Social Security Act govern the NEW program?

NEW programs are subject only to those requirements at section 412(a)(2) of the Act, as amended by PRWORA, "Grants for Indian Tribes that Received JOBS Funds."

§ 287.110 Who is eligible to receive assistance or services under a Tribe's NEW program?

(a) A Tribe must specify in its NEW program plan the population and service area to be served. In cases where a Tribe designates a service area for its NEW program that is different from its Bureau of Indian Affairs (BIA) service area, an explanation must be provided.

(b) A Tribe must include eligibility criteria in its plan and establish internal operating procedures that clearly specify the criteria to be used to establish an individual's eligibility for NEW services. The eligibility criteria must be equitable and defensible in event of a legal challenge.

§ 287.115 When a NEW grantee serves TANF recipients, what coordination should take place with the State or Tribal TANF agency?

The Tribe should coordinate with the State or Tribal TANF agency on:

(a) Eligibility criteria for TANF recipients to receive NEW program services;

(b) Exchange of case file information;

(c) Changes in client status that result in a loss of cash assistance, food stamps, Medicaid or other medical coverage;

(d) Identification of work activities that may meet State work participation requirements;

(e) Resources available from the State or Tribal TANF agency to ensure efficient delivery of benefits to the designated service population;

(f) Policy for exclusions from the TANF program (e.g., criteria for exemptions and sanctions);

(g) Termination of TANF assistance when time limits become effective;

(h) Use of contracts in delivery of TANF services;

(i) Prevention of duplication of services to assure the maximum level of services is available to participants;

(j) Procedures to ensure that costs of other program services for which welfare recipients are eligible are not shifted to the NEW program; and

(k) Reporting data for TANF quarterly and annual reports.

§ 287.120 What work activities may be provided under the NEW program?

(a) The Tribe will determine what work activities are to be provided.

(b) Examples of allowable activities include, but are not limited to: Educational activities, alternative education, post secondary education, job readiness activity, job search, job skills training, training and employment activities, job development and placement, on-the-job training (OJT), employer work incentives related to OJT, community work experience, innovative approaches with the private sector, pre/post employment services, job retention services, unsubsidized employment, subsidized public or private sector employment, community service programs, entrepreneurial training, management training, job creation activities, economic development leading to job creation, and traditional subsistence activities.

§ 287.125 What supportive and job retention services may be provided under the NEW program?

The NEW program grantee may provide, pay for or reimburse expenses for supportive services, including but not limited to transportation, child care, traditional or cultural work related services, and other work or family sufficiency related expenses that the Tribe determines are necessary to enable a client to participate in the program.

§ 287.130 Can NEW program activities include job market assessments, job creation and economic development activities?

(a) A Tribe may conduct job market assessments within its NEW program. These might include the following:

(1) Consultation with the Tribe's economic development staff or leadership that oversees the economic and employment planning for the Tribe;

(2) Consultation with any local Job Training Partnership Act (JTPA) program, Private Industry Council or planning agencies that have undertaken economic and employment studies for the area in which the Tribe resides;

(3) Communication with any training, research or educational agencies that have produced economic development plans for the area that may or may not include the Tribe; and

(4) Coordination with any State or local governmental agency pursuing economic development options for the area.

(b) The Tribe's NEW program may engage in activities and provide services to create jobs and economic opportunities for its participants. These services should be congruous with any available local job market assessments and may include the following:

(1) Tribal Employment Rights Office (TERO) services;

(2) Job creation projects and services;

(3) Self-employment;

(4) Self-initiated training that leads a client to improved job opportunities and employment;

(5) Economic development projects that lead to jobs, improved employment opportunities, or self-sufficiency of program participants;

(6) Surveys to collect information regarding client characteristics; and

(7) Any other development and job creation activities that enable Tribal members to increase their economic independence and reduce their need for benefit assistance and supportive services.

§ 287.135 Are bonuses, rewards and stipends allowed for participants in the NEW program?

Bonuses, stipends, and performance awards are allowed. However, such allowances may be counted as income in determining eligibility for some TANF or other need-based programs.

§ 287.140 With whom should the Tribe coordinate in the operation of its work activities and services?

The administration of work activities and services provided under the NEW program must ensure that appropriate coordination and cooperation is maintained with the following entities operating in the same service areas as the Tribe's NEW program:

(a) State, local and Tribal TANF agencies;

(b) Any other agency whose programs impact the service population of the NEW program, including employment, training, placement, education, child care, and social programs.

§ 287.145 What measures will be used to determine NEW program outcomes?

Each grantee will develop performance standards and measures to ensure accountability for its program results. A Tribe's program plan must identify planned program outcomes and the measures the Tribe will use to determine them. ACF will compare

planned outcomes against outcomes reported in the Tribe's annual reports.

Subpart F—Data Collection and Reporting Requirements

§ 287.150 Are there data collection requirements for Tribes that operate a NEW program?

(a) Yes, the Tribal agency or organization responsible for operation of a NEW program must collect data and submit reports as specified by the Secretary.

(b) A NEW program grantee must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding its service population.

(c) Required reports will provide Tribes, the Secretary, Congress, and other interested parties with information to assess the success of the NEW program in meeting its goals. Also, the reports will provide the Secretary with information for monitoring program and financial operations.

§ 287.155 What reports must a grantee file with the Department about its NEW program operations?

(a) Each eligible Tribe must submit an annual report that provides a summary of program operations.

(b) The Secretary has developed an annual operations report, which is in OMB clearance. It will specify the data elements on which grantees must report, including elements that provide information regarding the number and characteristics of those served by the NEW program. This report will be in addition to any financial reports required by law, regulations, or Departmental policies.

(c) The report form and instructions for its use will be distributed through ACF's program instruction system.

(d) The program operations report will be due September 28, 90 days after the close of the NEW program year.

§ 287.160 What reports must a grantee file regarding financial operations?

(a) Grantees will use SF–269A to make an annual financial report of expenditures for program activities and services.

(b) Annual financial reports will be due to the appropriate Regional Office no later than September 28, 90 days after the end of the NEW program year.

§ 287.165 What are the data collection and reporting requirements for Public Law 102–477 Tribes that consolidate a NEW program with other programs?

(a) Currently, there is a single reporting system for all programs operated by a Tribe under Public Law 102–477. This system includes a program report, consisting of a narrative report, a statistical form, and a financial report.

(1) The program report is required annually and submitted to BIA, as the lead Federal agency and shared with DHHS and DOL.

(2) The financial report is submitted on a SF–269A to BIA.

(b) Information regarding program and financial operations of a NEW program administered by a Public Law 102–477 Tribe will be captured through the existing Public Law 102–477 reporting system.

§ 287.170 What are the data collection and reporting requirements for a Tribe that operates both the NEW program and a Tribal TANF program?

Tribes operating both NEW and Tribal TANF programs must adhere to the separate reporting requirements for each program. NEW program reporting requirements are specified in §§ 287.150—287.170.

[FR Doc. 98–19007 Filed 7–21–98; 8:45 am]

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federal register

Wednesday
July 22, 1998

Part III

Environmental Protection Agency

40 CFR Part 81

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6126–8]

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is no Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 18, 1998, the EPA published a proposal to approve the identification of additional ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable. The comment period concluded on June 17, 1998. Comments were received on the proposal during the comment period. Today, the EPA is addressing the comments and taking final action to approve the identification of six additional ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable. Upon promulgation of this action, the Code of Federal Regulations (CFR) for ozone will be amended to reflect such changes. Additionally, today's action is consistent with the President's memorandum of July 16, 1997. The President's memorandum called for EPA to publish an action identifying ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. Furthermore, this action is being taken as indicated in the direct final rule published on January 16, 1998, which, due to the receipt of adverse comments, was withdrawn on March 16, 1998 and subsequently converted to a proposal. On June 5, 1998, the Agency promulgated a final rule, effective immediately, responding to the adverse comments, thus completing the action identifying ozone areas where the 1-hour standard is no longer applicable. According to the final rule, the Agency intended to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard. The six additional areas identified today are: Dayton-Springfield, Ohio; Detroit-Ann Arbor, Michigan; Warrick County, Indiana; Grand Rapids, Michigan; Poughkeepsie, New York; and Morgan County, Kentucky.

DATES: This action will be effective on July 22, 1998.

ADDRESSES: Documents relevant to this rulemaking are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–98–19, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238. In addition, the following Regional contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region II—Ray Werner, (212) 637–3706
Region IV—Kay Prince, (404) 562–9026
Region V—Todd Nettesheim, (312) 353–9153

SUPPLEMENTARY INFORMATION: Electronic Availability—The official record for this final rule, as well as the public version, has been established under docket number A–98–19. A public version of this record which does not include any information claimed as Confidential Business Information is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official final rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Table of Contents

I. Background

On July 16, 1997, the President issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (Act) would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also promulgated regulations providing that revocation of the 1-hour ozone national ambient air quality standard (NAAQS) would occur on an area-by-area basis when EPA determined that an area was meeting the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

Therefore, on January 16, 1998, in accordance with the President's memorandum and the regulations promulgated on July 18, 1997, the Agency issued a direct final rule (63 FR 2726) which identified ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. However, due to the receipt of adverse comments, the direct final action was withdrawn on March 16, 1998 (63 FR 12652) and converted to a proposed rule that had previously been published on January 16, 1998 (63 FR 2804). The Agency summarized and addressed all relevant public comments in a subsequent final rule, published and effective on June 5, 1998 (63 FR 31014). According to the final rule, the Agency intended to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard and to take similar action each year thereafter.

On May 18, 1998, the EPA published a proposal to approve the identification of six additional ozone areas attaining the 1-hour standard and to which the 1-

hour standard is no longer applicable (63 FR 27247). Comments were received on the proposal during the comment period ending on June 17, 1998.

II. Summary of Today's Action

The purpose of this document is to respond to comments received on the May 18th proposed rule and finalize the identification of the six additional areas that EPA has determined are not violating the 1-hour standard and, therefore, with respect to which the 1-hour standard no longer applies. The newly identified areas are: Dayton-Springfield, Ohio; Detroit-Ann Arbor, Michigan; Warrick County, Indiana; Grand Rapids, Michigan; Poughkeepsie, New York; and Morgan County, Kentucky.

III. Public Comments and EPA Responses

The following discussion summarizes and responds to the comments received on the proposed rule published on May 18, 1998 (63 FR 27247).

Comment: The commenter states that clean monitoring data alone are an insufficient legal basis for revocation of the applicability of the 1-hour standard in these areas and that all requirements of section 107(d)(3)(E) of the Act must be met in order to have the standard revoked.

Response: The Agency previously addressed this question in its promulgated rule of June 5, 1998 (63 FR 31014) and incorporates by reference the discussion of this issue therein. In brief, as this action is not a redesignation, but rather a determination that the 1-hour NAAQS no longer applies to certain areas, pursuant to the regulations promulgated in July 1997 as part of the rulemaking regarding the ozone NAAQS (40 CFR 50.9(b)), the redesignation requirements of section 107(d)(3)(E) do not apply to this action. These regulations provide the legal basis for this action and specify the criteria that must be met—the determination by EPA that an area has air quality meeting the standard.

Comment: The commenter states that many of the areas contribute to downwind air quality problems in Canada.

Response: Section 115 does not play a role in today's rulemaking action because (1) EPA has not received any study or petition from an international agency; (2) today's action does not impose or revoke any air quality measures, as a result, the impact is neutral; and (3) the criteria for determining the standard does not apply do not include an analysis of international impacts. Furthermore, the EPA has not received any comments from the government of Canada or private Canadian citizens regarding this matter. In ongoing discussions between the EPA and the Canadian government, the overall benefits of the nitrogen oxides (NO_X) State implementation plan (SIP) call (62 FR 60318, November 7, 1997) as a vehicle to deal with transport are widely recognized.

Comment: Data considered for this rulemaking are incomplete. The commenter notes a problem with malfunctioning ozone monitors in Allegan County, Michigan and suspect monitoring conducted in Warrick County. In addition, the commenter notes that the New Haven, Michigan ozone monitor was not functioning during the May 1998 ozone episode.

Response: The EPA is only considering complete, quality assured air quality data in this rulemaking. Today's action does not consider 1998 air quality data, because these data have not yet been quality assured and have not been reported to the EPA. The 1995–1997 period was chosen because it was the most recent 3-year period at the time of this rule for which EPA and the States had complete data. With respect to the question of malfunctioning monitors in Allegan County, this rulemaking does not deal with Allegan County, therefore the comment is irrelevant to this rulemaking action. With regard to comments on the quality of Warrick County, Indiana ozone data, EPA considered only quality assured ozone data for the 1995–1997 period and has no reason to suspect the quality of the ozone data supplied by the State of Indiana. Furthermore, the commenter provides no documentation to support the claim of suspicious ozone data in Warrick County. As to the comment that the monitor in New Haven, Michigan was not functioning during May 1998, draft air quality data reports for 1998 indicate that this monitor was, in fact, running during the May 1998 period and has not recorded any exceedances of the 1-hour ozone NAAQS.

Comment: The commenter notes that meteorological conditions in 1996 and 1997 were atypical and a meteorological analysis should be included to show whether the areas have attained the 1-hour standard.

Response: The Agency previously addressed this concern regarding variations in meteorological conditions in its final rule promulgated on June 5, 1998 (63 FR 31014) and incorporates that discussion by reference. Attainment of the ozone NAAQS is determined using three consecutive years of data to account for variations in meteorological conditions, as well as variations in volatile organic compounds (VOC) and NO_X emissions. The ozone NAAQS is designed to take into account such variations.

Comment: Modeling predicts continued violations of the 1-hour NAAQS in these areas.

Response: The EPA's authority for this action is based on the regulatory provisions adopted when it promulgated the 8-hour ozone NAAQS in July 1997 (62 FR 38856 (July 18, 1997)). Those regulations, in 40 CFR 50.9(b), provide that the "1-hour standard set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard." Those regulations specify a single criterion for determining that the 1-hour standard no longer applies—the determination by EPA that an area has air quality meeting the 1-hour standard. The EPA believes that is the only criterion that may be applied in this rulemaking, and that it has been satisfied in the case of all the areas covered by this action. In essence, the commenters' issue, properly viewed, is not with the action being taken at this time, but with the regulatory provision on which this action is based. That regulation was promulgated in July 1997, the commenters' issues are therefore untimely.

Comment: Areas are in noncompliance with their maintenance plans. The commenter notes that Detroit, Michigan has experienced exceedances of the ozone NAAQS, despite the implementation of required contingency measures.

Response: Under section 107 of the Act, in order to be redesignated, the Administrator must approve a maintenance plan that meets the requirements of section 175(A) of the Act. Section 175(A) requires maintenance plans to include contingency measures sufficient to "promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." On March 7, 1994, the EPA published the final approval of the redesignation request and maintenance plan for the Detroit area. Subsequently, the area violated the ozone standard and, in accordance with the approved maintenance plan, the area implemented two contingency measures, a low volatility gasoline program, and an expansion of the Stage I gasoline vapor recovery program. Since that time, the area has experienced exceedances, but not violations of the ozone standard. As the area is attaining the standard, it satisfies the criterion for revocation of the NAAQS specified in 40 CFR 50.9(b). In

fact, the exceedances experienced in the area in May 1998 occurred prior to the control period for the low volatility gasoline program which runs from June 1 to September 15. As a result, Michigan has implemented its approved maintenance plan in the Detroit area and the contingency measures appear to be working as designed to prevent future violations of the 1-hour ozone NAAQS.

Comment: The EPA has determined that these areas interfere with downwind areas' abilities to attain the 1-hour standard for ozone.

Response: The EPA is addressing this issue in the Eastern United States through the NO_X SIP call, which EPA has proposed (62 FR 60318, November 7, 1997). The proposal would place controls for NO_X emissions in large geographic upwind areas that contain both attainment and nonattainment areas. The controls would reduce NO_X emissions and, as a result, ozone levels. The EPA has also been petitioned, under section 126(b) of the Act, to place controls on upwind stationary sources of NO_X emissions. More generally, it should be noted that upwind sources are subject to section 110(a)(2)(D) regardless of whether the 1-hour standard continues to apply to them. Accordingly, a determination that the 1-hour standard does not apply to upwind areas does not preclude additional reductions in the upwind areas. Furthermore, the only criterion specified in 40 CFR 50.9(b) for revocation is EPA's determination that the area itself is meeting the standard and the factor referred to by the commenter is not relevant to that issue.

Comment: Children's health will be disproportionately and adversely affected by this rule.

Response: EPA disagrees with this comment. Today's action will not result in diminished controls or worsened air quality.

Comment: A group of commenters expressed concern that EPA did not revoke the 1-hour NAAQS for the San Francisco Bay area despite its continued violations, but did revoke the NAAQS for other areas designated attainment. The commenters stated that EPA's approach misapplies 40 CFR 50.9 (the regulation governing revocation of the 1-hour standard), violates the Act and leads to inconsistent and illogical results.

Response: The Agency previously addressed this comment in its final rule promulgated on June 5, 1998 (63 FR 31014) and incorporates by reference that discussion. The EPA is continuing the approach employed in the earlier notices. The Presidential memorandum of July 16, 1997 (62 FR 38421, July 18, 1997) states, "For areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect." This policy should include maintenance and attainment areas which currently violate the 1-hour standard. In addition, on December 29, 1997, Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, issued guidance, entitled *Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS,* which reiterates that "The EPA will not revoke the 1-hour standard in an area that is violating that standard." The EPA believes that to determine that the 1-hour standard ceases to apply to the Bay Area would mislead the public into thinking their health was not at risk. The EPA will not revoke the 1-hour NAAQS in an area that measures violations during the prior 3-year period. The Bay Area had a total of 43 exceedances and 17 violations of the 1-hour standard since the June 1995 redesignation to attainment. Therefore, for all of the above reasons, the Agency believes that it is prudent to keep the 1-hour standard in place for the Bay Area.

In addition, EPA disagrees that its actions are inconsistent or arbitrary. The commenters point out that an area with clean data for all years in the 1990's, except for four or more exceedances in one year, may not receive a determination that the standard will cease to apply, but an area with exceedances in all years in the 1990's, except for less than four exceedences in a 3-year period, may receive such a determination. Factually, the commenters are correct because the 1-hour NAAQS is based on air quality in a consecutive 3-year period. After EPA revised the 1-hour NAAQS, instead of immediately revoking it for all areas, EPA determined that it should be phased out by a determination that it would cease to apply on any area that attained it for a 3-year period, beginning 1994–96 and continuing for each 3-year period (on a rolling basis) after that. Although an area may experience exceedances after the 1-hour standard is determined no longer to apply, the new 8-hour standard is designed to protect the air quality.

Comment: The commenter believes that retention of the 1-hour standard in maintenance and attainment areas will not promote early attainment of the 8-hour standard and EPA cannot justify its approach based on a desire to protect air quality.

Response: The Agency previously addressed this comment in a final rule promulgated on June 5, 1998 (63 FR 31014) and incorporates by reference that discussion. Most, if not all, of the measures undertaken for the purpose of attaining the 1-hour standard will assist in the attainment of the 8-hour standard This is because most areas with 1-hour exceedances also have 8-hour exceedances. As more measures are undertaken to meet the 1-hour standard, the 1-hour concentrations composing the 8-hour average will decrease in magnitude, as will the number of 8-hour exceedances.

IV. Analysis of Air Quality Data

This final action, to determine that the 1-hour standard no longer applies to selected areas, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and Appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

The 1-hour standard no longer applies to an area once EPA determines that the area has air quality not violating the 1-hour standard. Determinations for this document were based upon the most recent data available, i.e., 1995–1997 data. Detailed air quality data information used for today's determinations is contained in the Technical Support Document (TSD) to Docket No. A–98–19.

V. Tables

The ozone tables codified in today's action are significantly different from the tables now included in 40 CFR part 81. The current 40 CFR part 81 designation listings (revised November 6, 1991 and most recently revised June 5, 1998) include, by State and NAAQS pollutant, a brief description of areas within the State and their respective designation. Today's final action includes completely new entries for the six additional ozone areas identified where the 1-hour standard no longer applies.

VI. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The OMB has exempted this regulatory action from Executive Order 12866 review.

B. Rule Effective Date

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that the 1-hour ozone standard no longer applies. The immediate effective date for this action is authorized under both 5 U.S.C. 553 (d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is certifying that this final rule will not have a significant impact on a substantial number of small entities, because the determination that the 1-hour standard ceases to apply does not subject any entities to any additional requirements.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action, as promulgated, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States court of Appeals for the appropriate circuit by September 21, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

G. Applicability of Executive Order (E.O.)13045

On April 21, 1997, the President signed an Executive Order (13045) entitled "Protection of Children from Environmental Health Risks and Safety Risks." This is the primary directive to Federal agencies and departments that Federal health and safety standards now must include an evaluation of the health or safety effects of the planned regulation on children. For rules subject to the Executive Order, agencies are further required to issue an explanation as to why the planned regulation is preferable to other potentially effective and reasonable feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by E.O. 12866, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 81, of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.315, the table entitled "Indiana-Ozone (1-Hour Standard" is amended by revising the entry for "Warrick County Area" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Warrick County Area:				
Warrick County	7–22–98	1 hr.std.N.A.[2]		
* * *	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.

[2] 1 hour standard Not Applicable.

* * * * *

3. In § 81.318, the table entitled "Kentucky-Ozone (1-Hour Standard)" is amended by revising the entry for "Morgan County Area" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date	Type	Date [1]	Type
* * *	*	*	*	*
Morgan County Area:				
Morgan County	7–22–98	1 hr.std.N.A.[2]2		
* * *	*	*	*	*

[1] This date is June 5,1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

4. In § 81.323, the table entitled "Michigan-Ozone (1-Hour Standard" is amended by revising the entries for "Detroit-Ann Arbor Area" and "Grand Rapids Area" to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Detroit-Ann Arbor Area:				
Livingston County	7–22–98	1 hr.std.N.A.[2]		
Macomb County	7–22–98	1 hr.std.N.A.[2]		
Monroe County	7–22–98	1 hr.std.N.A.[2]		
Oakland County	7–22–98	1 hr.std.N.A.[2]		
St. Clair County	7–22–98	1 hr.std.N.A.[2]		
Washtenaw County	7–22–98	1 hr.std.N.A.[2]		
Wayne County	7–22–98	1 hr.std.N.A.[2]		
* * *	*	*	*	*
Grand Rapids Area:				
Kent County	7–22–98	1 hr.std.N.A.[2]		
Ottawa County	7–22–98	1 hr.std.N.A.[2]		
* * *	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

5. In § 81.333, the table entitled "New York-Ozone (1-Hour Standard" is amended by revising the entry for "Poughkeepsie Area" and revising footnote 2 to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Poughkeepsie Area:				
Dutchess County	7–22–98	1 hr.std.N.A.[3]		
Orange County (remainder)	7–22–98	1 hr.std.N.A.[3]		
Putnam County	7–22–98	1 hr.std.N.A.[3]		
* * *	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable for the remainder of Orange Co.
[3] 1 hour standard Not Applicable.

* * * * *

6. In § 81.336, the table entitled "Ohio-Ozone (1-Hour Standard)" is amended by revising the entry for "Dayton-Springfield Area" to read as follows:

§ 81.336 Ohio.

OHIO-OZONE (1-HOUR STANDARD)

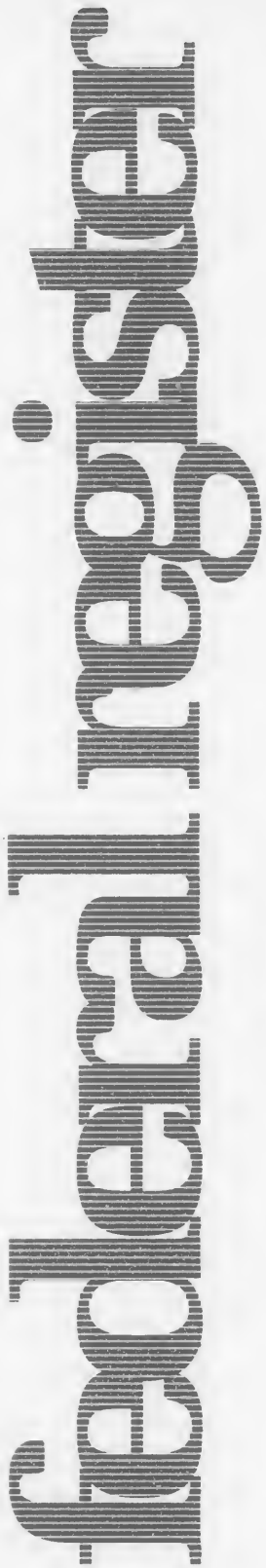
Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Dayton-Springfield Area:				
Clark County	7–22–98	1 hr.std. N.A.[2]		
Greene County	7–22–98	1 hr.std. N.A.[2]		
Miami County	7–22–98	1 hr.std.N.A.[2]		
Montgomery County	7–22–98	1 hr.std.N.A.[2]		
* * *	*	*	*	*

[1] This date is June 5, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * *

[FR Doc. 98–19388 Filed 7–21–98; 8:45 am]
BILLING CODE 6560–50–P

Wednesday
July 22, 1998



Part IV

Environmental Protection Agency

40 CFR Part 455

Amendments to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Organic Pesticide Chemicals Manufacturing Industry—Pesticide Chemicals Point Source Category; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 455

[FRL–6126–6]

Amendments to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Organic Pesticide Chemicals Manufacturing Industry—Pesticide Chemicals Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating amendments to regulations that limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTWs) by existing and new sources that manufacture pesticide active ingredients (PAIs). Today's amendments only affect new and existing facilities that manufacture the PAI pendimethalin. These amendments are based on additional effluent monitoring data submitted to the Agency by the sole existing pendimethalin manufacturer, the American Cyanamid Company.

DATES: This direct final rule is effective without further notice on October 20, 1998 unless EPA receives relevant adverse comment by September 21, 1998. If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments in triplicate to Ms. Shari H. Zuskin, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. Comments may also be sent via e-mail to: zuskin.shari@epamail.epa.gov. Electronic comments must be submitted in ACSII file avoiding the use of special characters and any form of encryption. Electronic comments will also be accepted in WordPerfect 5.1 or 6.1 file format. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Ms. Shari H. Zuskin at (202) 260–7130 or via e-mail at: zuskin.shari@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are existing or new sources which generate process wastewater from the manufacture of the pesticide active ingredient Pendimethalin. Regulated categories and entities include:

Category	Examples of regulated Entities
Industry	• Existing or New Pesticide Manufacturers of Pendimethalin.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 455.20 of the final rule, published in the **Federal Register** on September 28, 1993 [58 FR 50869]. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Overview

This preamble describes the legal authority of this direct final rule, background information on the final pesticide chemicals manufacturing industry effluent limitations guidelines and standards (58 FR 50638; September 28, 1993), the amendments to the September 1993 final rule, and the application of the technical and economic methodologies developed for the final rule to the development of these amendments.

Abbreviations, acronyms, and other terms used in this preamble are defined in Appendix A of the preamble to the final pesticide chemicals manufacturing effluent limitations guidelines and standards (58 FR 50638; September 28, 1993).

I. Legal Authority

These amendments are being promulgated to revise the effluent guidelines and standards of performance for the Organic Pesticide Chemicals Subcategory of the Pesticide Chemicals Point Source Category under the authorities of Sections 301, 304, 306, 307, and 501 of the Clean Water Act, also referred to as "the Act."

II. Background

A. Development of Final Pesticide Chemicals Manufacturing Guidelines

A full discussion of the development of the final pesticide chemicals manufacturing effluent limitations guidelines and standards is presented in the preamble to the final rule (58 FR 50638; September 28, 1993). To summarize, on April 10, 1992, (57 FR 12560) EPA proposed new effluent limitations guidelines and standards for new and existing facilities that manufacture pesticide active ingredients (PAIs). The PAI-specific numeric limitations were based, wherever possible, on actual industry monitoring data of the effluent concentrations of PAIs in wastewaters treated by full-scale treatment systems considered to be best available technology economically achievable (BAT). Where actual full-scale data were not available, the final BAT limitations were based on a transfer of treatment system performance data between structurally similar PAIs, supported by data from EPA or industry bench-scale treatability studies. In some cases, the final BAT limitations may require that existing PAI treatment technologies be improved by enhanced operations, such as: hydrolysis with increased retention time; carbon adsorption with increased retention time; and additional PAI monitoring. After incorporating new data submittals (mostly additional long-term treatment system performance data), as discussed in a Notice of Data Availability (NOA) (58 FR 19392; April 14, 1993), EPA promulgated final regulations for the pesticide chemicals manufacturing industry on September 28, 1993.

B. American Cyanamid Petition for Review

As part of the 1993 promulgated effluent limitations guidelines and standards, numerical limitations were included based on incineration as the BAT technology for pendimethalin and two other PAIs (terbufos and phorate)

manufactured by American Cyanamid. American Cyanamid incinerates wastewater and other waste generated during the manufacture of these three PAIs, and discharges incinerator scrubber blowdown from their facility. The proposed numerical limitations for these three PAIs were calculated using data provided to EPA by American Cyanamid, including annual production data, the number of annual production days, and daily flow rate and effluent monitoring data for pendimethalin, terbufos, and phorate.

In their comments on the proposed rule, American Cyanamid disagreed with EPA on the technical details of how the numerical limitations were developed for pendimethalin, terbufos, and phorate. For pendimethalin, American Cyanamid commented that EPA had only included data from one of their two incinerators used to treat wastewaters containing pendimethalin. American Cyanamid's other comments, concerning all three PAIs, focused primarily on the calculation and use of long-term flow rates and PAI loadings in the incinerator scrubber blowdown streams. EPA recalculated the limitations for pendimethalin, phorate, and terbufos based on American Cyanamid's comments, and presented the revised limitations in the April 14, 1993, NOA. American Cyanamid did not comment on the phorate and terbufos limitations presented in the NOA, but did comment on the pendimethalin limitations. The comments related to pendimethalin questioned whether certain daily loadings in their effluent monitoring database should have been used to calculate the pendimethalin limitations based on the incinerator flow rate data available on those days. EPA took these comments into account when calculating the final pendimethalin limitations, which were promulgated on September 28, 1993.

In February 1994, American Cyanamid filed a petition for review of the final effluent limitations guidelines and standards (*American Cyanamid Company* v. *U.S. Environmental Protection Agency*, No. 94–1367 (8th Cir.)). Among other things, American Cyanamid disagreed with the statistical approach EPA used in the final rule to calculate mass-based limitations using the daily mass loading, flow rate, and production data available for pendimethalin. After filing its petition, American Cyanamid also provided EPA with some additional long-term monitoring data for the company's pendimethalin incineration operations. Although EPA has not changed its statistical approach for deriving the limitations, the Agency has evaluated the new monitoring data submitted by American Cyanamid and has agreed, through today's rule amendments, to revise the limitations for pendimethalin based on these new data. EPA and American Cyanamid also agreed on an approach for determining which daily monitoring data EPA should use to calculate today's revised pendimethalin limitations. Specifically, EPA used monitoring data for only those days when both flow rate and PAI concentration data (specifically pendimethalin data) were available for both operating incinerators. American Cyanamid has agreed that it will terminate its petition for review of the final regulations in light of the new pendimethalin limits that EPA is promulgating today as well as an additional letter that EPA has sent to the company clarifying the operation of these regulations.

III. Amendments to the Final Pesticide Chemicals Manufacturing Guidelines

The amendments change the daily maximum and monthly average effluent limitations for pendimethalin listed for new and existing direct and indirect discharges. Table 2 to Part 455 lists the "Organic Pesticide Active Ingredient Effluent Limitations Best Available Technology Economically Achievable (BAT) and Pretreatment Standards for Existing Sources (PSES)." Table 3 to Part 455 lists the "Organic Pesticide Active Ingredient New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS)."

EPA has revised the daily maximum effluent limitation for pendimethalin from the current limit of 1.17×10^{-2} pounds pendimethalin pollutant/1,000 pounds pendimethalin product to a new limit of 1.30×10^{-2} pounds pendimethalin pollutant/1,000 pounds pendimethalin product.

EPA has also revised the monthly average effluent limitation for pendimethalin from the current limit of 3.62×10^{-3} pounds pendimethalin pollutant/1,000 pounds pendimethalin product to a new limit of 3.99×10^{-3} pounds pendimethalin pollutant/1,000 pounds pendimethalin product.

IV. Environmental Impact of the Amendments

The previously promulgated pendimethalin limitations are being amended in today's notice based on additional incinerator operating data provided to EPA by American Cyanamid. EPA modified the long-term monitoring database used to calculate the previously promulgated pendimethalin limitations with these operating data. EPA believes that the long-term monitoring database supporting today's revised limitations represents an accurate indication of incinerator performance and achievable pendimethalin discharge loadings. The amended limitations represent relatively small increases in the allowable pendimethalin discharge loadings. Therefore, these amendments are not expected to significantly impact the pendimethalin loadings currently discharged from the incinerators. As noted, there is only one existing manufacturer of pendimethalin. For these reasons, the revised limitations are not expected to significantly affect the environmental impact analysis that was issued at the time the final rule was promulgated.

V. Economic Impact of the Amendments

These amendments to the previously promulgated limitations do not alter the BAT treatment technology for pendimethalin. The Agency considered the economic impact of the regulation when the limitations were promulgated in 1993, and concluded at that time that the pendimethalin limitations were economically achievable. Because the amendments are based on the same BAT technology and level of operation for which costs were developed at promulgation, the economic impact is not expected to be significantly changed.

VI. Promulgation as a Direct Final Rule

EPA is promulgating these changes to the Part 455 limitations for pendimethalin as a "direct final" rule because the Agency believes they are noncontroversial. We do not expect any relevant adverse comments on these rule changes. Nevertheless, since it is possible that there are such interested parties, EPA is providing an opportunity for the public to submit comments on today's rule. Specifically, EPA is issuing a separate, parallel proposal elsewhere in today's **Federal Register** that references the rule changes set forth in this direct final rule.

If EPA receives relevant adverse comments on the rule by the close of the 60-day comment period, it will publish a document in the **Federal Register** that withdraws this direct final rule in a timely manner. The Agency will then address the public comments in a later final rule that is based on today's proposed rule. Note that EPA will not provide for a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

If, as expected, EPA does not receive relevant adverse comment on the rule, then this direct final rule will become effective on the effective date noted above, without further notice.

VII. Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

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

B. Unfunded Mandates Reform Act (UMRA)

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Again, today's amendments do not significantly alter the pendimethalin numerical limitations and, in fact, simply relax these limitations slightly. Therefore, there is no additional compliance cost associated with today's amendments. Thus, today's final rule is not subject to the requirements of Sections 202 and 205 of the UMRA. In addition, today's amendments do not add any additional requirements/mandates on State, local and/or tribal governments beyond those of the final regulation promulgated in 1993. Currently there is only one State government that would have to revise the permit for one facility based on the amendments being promulgated today. This State government has already been notified. Therefore, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of the rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an RFA. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As discussed earlier in this notice, there are no added costs to the regulated community associated with compliance with this final rule. The rule simply replaces the current effluent limitations and standards for one pesticide active ingredient, pendimethalin, with less stringent limitations and standards. In these circumstances, there will obviously be no increase in the cost of compliance with the requirements. Further, there is only one pesticide manufacturer of pendimethalin in this subcategory and the manufacturer is not a small entity, as defined by the Small Business Administration (SBA) [1]. Consequently, today's change will not have a significant economic impact on a substantial number of small entities.

D. Congressional Review Act

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

E. Paperwork Reduction Act

There are no information collection requirements in today's final rule.

F. Executive Order 13045

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

[1] SBA defines a small business in the Pesticide Chemicals Manufacturing Industry as an entity with less than 500 firm employees.

the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

There are no specified and/or otherwise affected analytical methods in today's amendments.

List of Subjects in 40 CFR Part 455

Environmental protection, Pesticide chemicals manufacturing, Water treatment and disposal, Water pollution control.

Dated: July 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 455—[AMENDED]

1. The authority citation for part 455 continues to read as follows:

Authority: Sections 301, 304, 306, 307, and 501 Pub. L. 92–500, 86 Stat, 816, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. In Table 2 to Part 455 the entry for pendimethalin is revised to read as follows:

TABLE 2 TO PART 455.—ORGANIC PESTICIDE ACTIVE INGREDIENT EFFLUENT LIMITATIONS BEST AVAILABLE TECHNOLOGY ECONOMICALLY ACHIEVABLE (BAT) AND PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Pesticide	kg/kkg (lb/1,000 lb) pounds of pollutant per 1000 lbs. product		Notes
	Daily maximum shall not exceed	Monthly average shall not exceed	
* * * * *	*	*	*
Pendimethalin	1.30×10^{-2}	3.99×10^{-3}	
* * * * *	*	*	*

* * * * *

3. In Table 3 to part 455 the entry for pendimethalin is revised to read as follows:

TABLE 3 TO PART 455.—ORGANIC PESTICIDE ACTIVE INGREDIENT NEW SOURCE PERFORMANCE STANDARDS (NSPS) AND PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Pesticide	kg/kkg (lb/1,000 lb) pounds of pollutant per 1000 lbs. product		Notes
	Daily maximum shall not exceed	Monthly average shall not exceed	
* * * * *	*	*	*
Pendimethalin	1.30×10^{-2}	3.99×10^{-3}	
* * * * *	*	*	*

* * * * *

[FR Doc. 98–19514 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 455

[FRL–6126–7]

Amendments to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Organic Pesticide Chemicals Manufacturing Industry—Pesticide Chemicals Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to regulations that limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTWs) by existing and new sources that manufacture pesticide active ingredients (PAIs). Today's amendments only affect new and existing facilities that manufacture the PAI pendimethalin. EPA is proposing these amendments based on additional effluent monitoring data submitted to the Agency by the sole existing pendimethalin manufacturer, the American Cyanamid Company.

DATES: Comments must be received by September 21, 1998.

ADDRESSES: Send comments in triplicate to Ms. Shari H. Zuskin, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460. Comments may also be sent via e-mail to: zuskin.shari@epamail.epa.gov. Electronic comments must be submitted in ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will also be accepted in WordPerfect 5.1 or 6.1 file format. No Confidential Business Information (CBI) should be submitted through e-mail. The public record (excluding confidential business information (CBI)) for this rulemaking is available for review at the EPA's Water Docket, 401 M Street, SW, Washington DC. For access to docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Shari H. Zuskin at (202) 260–7130 or via e-mail at: zuskin.shari@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of today's **Federal Register**, EPA is promulgating a "direct final" rule that makes certain changes to the regulations at 40 CFR Part 455 for the pesticide active ingredient Pendimethalin. In conjunction with the direct final rule, EPA is issuing this proposal to adopt the regulation changes contained in the direct final rule. The direct final rule explains EPA's rationale for making these regulation changes. It also explains why EPA is promulgating these changes as a direct final rule on the same day that it is proposing to make these changes and soliciting comment.

If EPA does receive relevant adverse comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register**. The Agency will then address the public comments in a later final rule that is based on this proposed rule. If, as expected, EPA does not receive relevant adverse comment, then the direct final rule will become effective on its effective date, without further notice. EPA will not provide for a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

Related Acts of Congress and Executive Orders

The direct final rule, which is being published in today's **Federal Register** in conjunction with this proposed rule, discusses the related acts of Congress and Executive Orders that EPA has addressed in this rulemaking, including the requirements of Executive Order 12866, the Unfunded Mandates Reform Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Congressional Review Act, the Paperwork Reduction Act, Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks, and the National Technology Transfer and Advancement Act.

List of Subjects in 40 CFR Part 455

Environmental protection, Pesticide chemicals manufacturing, Water treatment and disposal, Water pollution control.

Dated: July 14, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–19515 Filed 7–21–98; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
July 22, 1998

Part V

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education; Notice Inviting Applications for New Awards for Fiscal Year 1998 and Validation Competition; Notice

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education (Validation Competition)

AGENCY: Department of Education.

ACTION: Notice of Final Priorities and Selection Criteria for Fiscal Year 1998.

SUMMARY: The Secretary announces final priorities and selection criteria for fiscal year (FY) 1998 under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Grants to Institutions of Higher Education (IHEs) Validation Competition. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priorities are intended to increase knowledge by validating and disseminating effective model programs and strategies to promote the safety of students attending IHEs by preventing violent behavior and the illegal use of alcohol and other drugs by college students.

EFFECTIVE DATE: These priorities take effect August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The Safe and Drug-Free Schools Program, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington, D.C. 20202–6123. Telephone: (202) 260–3954. E-Mail Karmon__Simms@ed.gov. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

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**.

SUPPLEMENTARY INFORMATION: On June 9, 1998, the Secretary published the proposed priorities for this competition in a notice in the **Federal Register** (63 FR 31586). No comments were received, and the Secretary has made no modifications.

Priorities

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 all of the following priorities. The Secretary funds under this competition only applications that meet one or all of these absolute priorities:

Absolute Priority 1

Correcting misperceptions of student alcohol and other drug use among a large or influential subpopulation of students attending institutions of higher education.

Applicants must:

(1) Identify one large or influential student subpopulation (e.g. student athletes, members of fraternities and sororities) who will receive the intervention;

(2) Justify the selection of the subpopulation, and design the intervention, based on an assessment of objective data (such as needs assessments, student use surveys, assessment of students' dispositions toward drug use);

(3) Propose activities designed to correct misperceptions of this subpopulation about levels of student campus alcohol and drug use, student alcohol and drug use norms, and the consequences of student alcohol and drug use;

(4) Use a campus and community coalition to plan and implement the project;

(5) Develop measurable goals and objectives linked to the identified needs;

(6) Use a qualified evaluator to implement a rigorous evaluation of the project using outcomes-based (summative) performance indicators in addition to process (formative) measures, that document strategies used and measure the effectiveness of the program or strategy in reducing student drug use and violent behavior, and utilize a reference group or comparison group at the grantee's own or similar campus;

(7) Share information about their projects with Department of Education staff or their agents in order to assist grantees in the development of an evaluation strategy and to coordinate cross project site comparisons;

(8) Demonstrate ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact or prepare an article for publication within the grant period; and

(9) Provide statistics and information on crimes occurring on campus, especially liquor law violations, drug abuse violations, and weapons possession; and, at the request of the Secretary, coordinate with any report being prepared under section 204(a)(4)(B) of the Student Right-to-Know and Campus Security Act on policies, procedures and practices which have proven effective in the reduction of campus crime.

Absolute Priority 2

Assess the impact of an existing or new consortium (such as coalitions and other partnerships at the community, State, or regional levels) on limiting illegal alcohol and other drug use, and preventing intoxication and violence.

Applicants must:

(1) Establish a new, or expand an existing consortium at the community, State, or regional level by working together in partnership with key stakeholders to share information and to impact campus and public policy;

(2) Demonstrate evidence of commitment of consortium members and explain how the IHE will create or sustain opportunities for members to meet and work together on a regular basis;

(3) Describe proposed consortium activities and justify how such activities will bring about improvements in drug prevention programs and policies affecting AOD use decisions, and violence on campus;

(4) Provide criteria for membership, and how any potential expansion of membership would be carried out if additional individuals or organizations seek to join the consortium;

(5) Develop measurable goals and objectives for consortia linked to identified needs;

(6) Use prevention approaches that research or evaluation has shown to be effective in preventing or reducing violent behavior or the illegal use of alcohol and other drugs;

(7) Use a qualified evaluator to design and implement a rigorous evaluation of the project using outcomes-based (summative) performance indicators in addition to process (formative) measures that documents strategies used and measures the effectiveness of the consortium;

(8) Share information about their projects with Department of Education staff or their agents in order to assist grantees in the development of an evaluation strategy and to coordinate cross project sites;

(9) Design a program based on assessment of objective data (such as needs assessments, student use surveys, assessments of students' dispositions toward drug use, environmental assessments);

(10) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period; and

(11) At the request of the Secretary, coordinate with any report being prepared under section 204(a)(4)(B) of the Student Right-to-Know and Campus Security Act on policies, procedures and practices which have proven

effective in the reduction of campus crime.

Absolute Priority 3

Disseminate knowledge of existing model programs, new prevention theories, or new application of theories, theoretical models, or conceptual approaches (theories) to alcohol and other drug or violence prevention or both.

Applicants must:

(1) If proposing to disseminate knowledge on an existing model program, (a) document how the program was proven effective by explaining the needs assessment, implementation, evaluation, and outcomes of the program; (b) document how the model program effectively changed the campus and/or community; (c) explain how the model program advanced prevention thinking and activities; (d) discuss the type of institution(s) and student demographics to which the model program would be most replicable or adaptable; and (e) provide a timeline for the submission of the draft and final papers with appropriate attachments.

(2) If proposing a new theory or approach, (a) provide evidence that the theory/approach is based on an assessment of objective data (such as needs assessments, student use surveys, assessment of student dispositions toward drug use, statistics and information on crimes occurring on campus(es); (b) document how the theory/approach can be applied effectively to change the campus and/or community; (c)explain how the theory/approach will advance prevention thinking and activities; (d) discuss the type of institution(s) and student demographics to which the theory would be most replicable or adaptable; and (e) provide a timeline for the submission of the draft and final papers with appropriate attachments;

(3) Provide a letter of support from the applicant's direct supervisor and demonstrate the ability to start the project within 30 days after receiving Federal funding in order to maximize the time available to prepare an article for publication within the grant period; and

(4) At the request of the Secretary, coordinate with any report being prepared under section 204(a)(4)(B) of the Student Right-to-Know and Campus Security Act on policies, procedures and practices which have proven effective in the reduction of campus crime.

Selection Criteria for Absolute Priority 1 and Absolute Priority 2

(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 or factor under that criterion is indicated in parentheses.

(b) *The criteria.*

(1) *Need for project.* (10 points)

(i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project (5 points)

(B) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance.* (10 points)

(i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers the following factors:

(A) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (5 points)

(B) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(3) *Quality of the project design.* (20 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(B) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (10 points)

(C) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (5 points)

(4) *Quality of the project personnel.* (10 points)

(i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the following factors:

(A) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability. (2 points)

(B) The qualifications, including relevant training and experience, of key project personnel. (8 points)

(5) *Adequacy of resources.* (10 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (5 points)

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (5 points)

(6) *Quality of the management plan.* (15 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(B) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5 points)

(7) *Quality of the project evaluation.* (25 points)

(i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and

appropriate to the goals, objectives and outcomes of the proposed project. (10 points)

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

(C) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

Selection Criteria for Absolute Priority 3

(1) *Need for project.* (10 points)

(i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project. (5 points)

(B) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance.* (25 points)

(i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers the following factors:

(A) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (5 points)

(B) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (15 points) (C) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(3) *Quality of the project design.* (20 Points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(B) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (10 points)

(C) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (5 points)

(4) *Quality of the project personnel.* (20 points)

(i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of the project personnel, the Secretary considers the following factors:

(A) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability. (2 points)

(B) The qualifications, including relevant training and experience, of key project personnel. (18 points)

(5) *Adequacy of resources.* (10 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the costs are reasonable in relation to the number of persons to be served and the anticipated results and benefits. (10 points)

(6) *Quality of the management plan.* (15 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks. (5 points)

(B) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5 points)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7132.

(Catalog of Federal Domestic Assistance Number 84.184H Safe and Drug-Free Schools and Communities Act National Programs—Grants to Institutions of Higher Education Program)

Dated: July 17, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–19549 Filed 7–21–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CDFA No.: 84184H]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education; Notice Inviting Applications for New Awards for Fiscal Year 1998

Purpose of Program: The Safe and Drug-Free Schools and Communities (SDFSC) National Programs—Grants to Institutions of Higher Education (IHE) Validation Competition supports increased knowledge about effective programs by validating and disseminating model policies, practices, products and programs to prevent violent behavior and the illegal use of alcohol and other drugs by college students.

Eligible Applicants: Institutions of higher education or consortia of such institutions.

Applications Available: July 22, 1998.

Deadline for Receipt of Applications: August 24, 1998.

Note: All applications must be received on or before the deadline date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1999 from the rank-ordered list of unfunded applicants from this competition.

Deadline for Intergovernmental Review: 60 days from date of publication in **Federal Register.**

CFDA No. and name	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project period (month)
84.184H Drug and Violence Prevention Program in Higher Education: Validation Competitition	*Priority 1, $150,000–$250,000*	$200,000	6	$1,200,000	27
	Priority 2, $60,000–$80,000	$70,000	3	$210,000	27
	Priority 3, $15,000	$15,000	2	$30,000	15

Note: Range of awards, average size of awards, number of awards and available funding in this notice are estimates only. The Departments is not bound by any estimate in this notice. Funding estimates that are cited for priorities one and two represent support for 27 months for the entire project period. The funding estimate that is cited for priority three represents support for 15 months for the entire project period.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts, 74, 75, 77, 79, 80, 81, 82, 85, and 86; and 34 CFR parts 98 and 99; and (b) the notice of final priorities and selection criteria, as published elsewhere in this issue of the **Federal Register** applies to these competitions.

Drug and Violence Prevention Program in Higher Education: Validation Competition (CFDA 84.184H).

Absolute Priority 1

Correcting misperceptions of student alcohol and other drug use among a large influential subpopulation of students attending institutions of higher education.

Absolute Priority 2

Assess the impact of an existing or new consortium (such as coalitions and other partnerships at the community, State, or regional levels) on limiting illegal alcohol and other drug use, and preventing intoxication and violence.

Absolute Priority 3

Disseminate knowledge of existing model programs, new prevention theories, or new application of theories, theoretical models, or conceptual approaches (theories) to alcohol and drug or violence prevention or both.

For Applications or Information Contact: Safe and Drug-Free Schools Programs, 600 Independence Avenue, SW, Suite 604 Portals, Washington, DC 20202–6123. Telephone: 202–260–3954. By facsimile 202–260–3748. Internet: *http://www.ed.gov/offices/OESE/SDFS* or *http://www.edc.org/hec.* Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 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; on the Internet Gopher Service (at gopher://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

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Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7132.

Dated: July 17, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–19550 Filed 7–21–98; 8:45 am]
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federal register

Wednesday
July 22, 1998

Part VI

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Parts 1940 and 3565
Guaranteed Rural Rental Housing Program; Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Interim Final Rule; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 3565

RIN 0575–AC14

Guaranteed Rural Rental Housing Program

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Housing Service (RHS) is issuing new regulations for the Guaranteed Rural Rental Housing Program (GRRHP). This action is taken to implement the "Housing Opportunity Program Extension Act of 1996." The program is intended to increase the supply of affordable rural multifamily housing through partnerships between the Agency and major lending sources, including banks, state and local housing finance agencies, and bond issuers.

DATES: The effective date of this interim final rule is July 22, 1998. Written comments must be received on or before September 21, 1998. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through September 21, 1998.

ADDRESSES: Submit written comments, *in duplicate*, to the Chief, Regulations and Paperwork Management Branch, Rural Housing Service, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue, SW, Washington, DC 20250–0743. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Housing" in the subject line. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Acting Division Director, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone: (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for the purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget.

Discussion of Use of Interim Final Rule

The Rural Housing Service exercises its emergency authority pursuant to section 534(c) of the Housing Act of 1949 to issue interim regulations for the section 538 Guarantee Rural Rental Housing program. Rural areas have been particularly impacted by a series of major natural disasters over the past six months, including the tornado destruction in the central and southern states. Only by providing funding under this interim rule will critically needed multi-family rental projects be undertaken and completed as soon as possible this year. This is important because the Agency will give priority in guarantee approvals provided under this interim rule for housing developments in designated disaster areas. This will help ensure that low and moderate-income families served by these projects will have greater likelihood of securing safe, decent, affordable housing prior to winter. Further, the Agency finds the interim rule a reasonable step under the unusual circumstances since most interested parties have had ample opportunity to comment on the section 538 program from pilots conducted by the Agency over the past two years and since these same parties will have ample opportunity to comment on the interim rule prior to the publication of the final rule for Fiscal Year 1999 funding cycle. For the same reason, good cause is shown for publication of the rule without advance notice and opportunity for comment. However, comments will be accepted for 60 days after publication of this interim rule and will be considered when the rule is finalized.

Program funding levels are made public in a "Notice of Funds Availability" (NOFA) published concurrently with this interim final rule. Approximately $38 million in guaranteed loans is available in this fiscal year. Potential applicants are encouraged to apply as soon as possible and specifically take note of the priority to be given to areas impacted by Presidentially-declared disasters.

Civil Justice Reform

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

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Intergovernmental Consultation

The program is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. Intergovernmental consultation has been conducted in accordance with RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities even though this rulemaking action does involve a new program. At current funding levels of approximately $38 million, less than 30 applications are likely to be approved for guarantees. The requirements for participation will not affect small entities to a greater extent than large entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency 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 objections of the rule.

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

Background

The "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1996", provided funds to the Department to implement a multifamily mortgage guarantee program subject to enactment of authorizing legislation. On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," which authorized the section 538 Guaranteed Rural Rental Housing Program for the 1996 fiscal year. Appropriations acts have extended the program through the 1998 fiscal year. The program is intended to reach the needs of rural America by complementing 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. The rural residents will be provided rental housing through borrowers who receive financing from lenders encouraged to support multifamily affordable housing by the use of loan guarantees. Participants are encouraged to utilize the section 538 program in conjunction with other affordable housing financing and equity sources.

The Agency has developed regulations which are based on information gathered during the implementation of the fiscal year (FY) 1996 and 1997 demonstration programs. The demonstration programs were based upon informal listening sessions that were conducted by the Agency which were attended by approximately fifty different stakeholders, primarily those individuals representing mortgage bankers, federal agencies, housing interest groups, secondary market institutions, commercial bankers, private developers and various government regulatory agencies. The Agency received numerous comments and suggestions that were instructive in designing and structuring the demonstration program. The four most significant suggestions that were instituted in the demonstration program were: (1) use of NOFA with one point of contact, (2) simple application package, (3) no second underwriting review, and (4) compatibility with products already found in the secondary market. The Agency and stakeholders were clear about using the guarantee program to serve low and moderate-income families in strong markets. The Agency took many of the recommendations provided by the stakeholders for the demonstration programs, as well as for the regulation that follows.

In the first demonstration in FY 1996, the Agency sought to explore the optimum level of the initial guarantee fee, response to a 90 percent guarantee, and the need and receptiveness in rural markets to a guaranteed multifamily housing loan program. In that demonstration year, 50 proposals were received. Agency funding was sufficient for 10 proposals, two of which used tax exempt bonds permitted for the first-year demonstration. In most proposals, a combination of leverage and strong markets produced units that were affordable by low and moderate-income families. An initial guarantee fee of 1 percent and a limitation for the interest rate spread of 300 basis points (3 percent) over the 30 year bond rate were accepted in the marketplace. Of the proposals that are now built and renting, the rate of occupancy is above average, evidencing the need and demand for this housing in rural America.

In the FY 1997 demonstration, the Agency reduced the interest rate spread to 200 basis points (2 percent) and added a one-half percent annual renewal fee to the guarantee fee. Tax exempt bonds were not permitted for the FY 97 demonstration. It was also clear the demonstration program was completely viable without the use of tax exempt bonds. The Agency received 20 proposals and funded 16. The reduced number of proposals was determined to be the result of a late notice, short turnaround time for submission of the proposals, lack of formal regulations, and some confusion as to the availability of the program in States that received approval of a proposal the first year. In all other regards, though, the fact that feasible projects were developed on such short notice illustrated a strong interest and need for the program.

While the Agency is soliciting comments on all provisions of the regulation, the Agency is specifically looking for comments on the following areas:

(1) Occupancy Requirements

The Agency is capping rents (including any tenant-paid utilities) at 30 percent of 115 percent of the area median income (the maximum rent that can be charged and still have the unit affordable to a moderate income family). However, to assure longer-term affordability to moderate-income tenants, the Agency also requires the average rents for all units to not exceed 30 percent of 100 percent of area median income. This should be easily accomplished since many proposals include Low-Income Housing Tax Credits that would restrict tenant eligibility to those at 60 percent of median income or below. The Agency is specifically looking for comments on the following: Does this rule unduly restrict borrower participation in the program? Is it a practical step to assure long term affordability to intended low and moderate-income families? Does it affect the ability of developers to acquire other financing, or to rehabilitate complexes in the out years? Is this preferable to requiring tenant certifications to assure the complex is serving low-and moderate-income families?

(2) Competitive Process and Selection Criteria

The regulations are developed for a fully funded program where funding authority would be sufficient to meet demand. Therefore, the regulations do not include selection criteria and give the Agency Administrator the discretion to establish such criteria in NOFA that entails a competitive process. The Agency intends to review the potential demand for the program annually and use a competitive process when it appears that demand outweighs available funding.

Purpose and Program Summary

The program has been designed to increase the availability of affordable multifamily housing through partnerships between the Agency and 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 to be guaranteed under this program. Projects may be for new construction or acquisition with substantial rehabilitation. The Agency will guarantee such loans upon review of the lender's underwriting package, appraisal report, appropriate certifications, project information, and satisfactory completion of the appropriate level of environmental

review by the Agency. Lenders will be responsible for loan underwriting, management and servicing associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata split between the lender and the Agency from the first dollar lost.

Program applicability and funding will be announced by NOFA published in the **Federal Register**. When program funding levels exceed $100 million, funds are allocated to states based on the following criteria: (1) State's percentage of National rural population, 2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and (3) State's percentage of National average cost per unit. These criteria for allocation of funds to the states are consistent with other Agency housing programs. The criteria will enable the Agency to allocate funds based on a state's population and available households with income sufficient to meet the proposed rents, and to adjust the allocation for per unit new construction cost. The purpose of having a cost factor is to assure units produced reflect criteria for need, especially for high cost states. Eighty percent of the weight will be divided equally between population and income and 20 percent based on cost. When the funding levels are under $100 million, funds will all be held in a National office reserve and made available administratively in accordance with the NOFA and program regulations.

Subpart A—General Provisions

This subpart includes the purpose and legislative authority for GRRHP, definitions of terms found in the regulation, the general provisions and federal requirements applicable to the program, and the authority to issue a competitive NOFA in the event demand exceeds available funding. Key policies of this subpart are:

Section 3565.5 Ranking and Selection Criteria

The Agency intends to guarantee proposals that provide housing to the areas of greatest need. While a variety of financing packages is possible, the demand in the eligible market areas will determine the economic and market feasibility of the proposed development. In the event demand is projected to exceed available funds, the Agency reserves the option to establish selection criteria in an annual NOFA. This flexibility permits the Agency to create and modify the criteria to assure that facilities with guaranteed loans are geographically dispersed and ensure that the high need areas are served. Criteria used in the demonstration programs and under consideration may include the following:

(1) *Partnering and Leveraging*

In order to develop the maximum number of housing units and promote partnerships with states, local communities, and other partners with similar housing goals, participation loans and leveraging are encouraged.

(2) *Priority Based On Interest Rate*

Priority will be provided to the proposals that set the lowest interest rate spread (difference between the 30-year Treasury Bill rate and the note rate). However, the program will permit proposals that require up to 200 basis points (2 percent) over the 30 year Treasury Bill rate.

(3) *Preference for Proposals in a Colonia, Tribal Land or EZ/EC Community or State Identified Place.*

Those proposals to be developed in a colonia, tribal land, or EZ/EC community,or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing, will receive preference.

(4) *Geographic Diversity*

Priority will be given for smaller rural communities versus larger rural communities.

(5) *Commitment to Maintain Low-and Moderate-Income Occupancy*

Preference will be given for commitments by the applicant to maintain occupancy throughout the term of the loan for neediest (based on income) of the target population, with a priority at initial occupancy for low-income families.

(6) *Preference for Family Proposals*

Proposals addressing a need for family units with large bedroom mixes (3–5 bedrooms) will receive preference.

(7) *Administrator's discretion*

The Agency reserves the Administrator's discretion to effectively use funding to best explore program structure and effectiveness consistent with the best interests of the Government.

Section 3565.6 Exclusion of Tax-exempt Debt

Tax-exempt financing is not eligible for a loan guarantee in this program. However, the Agency has structured the program to be compatible with other affordable housing programs such as the Low Income Housing Tax Credit, taxable bonds, HOME Investment Partnerships Program (HOME) funds, and other State or locally funded tenant assistance or grants. Reviewers will note that regulations addressing eligibility of lenders, lien position, and minimum reporting to the Agency are intended to foster compatibility with the secondary market and other lenders' standards.

Subpart B—Guarantee Requirements

This subpart describes loans eligible for guarantee, extent of the guarantee and the guarantee fees. This subpart includes the transferability of the guarantee and the procedures the Agency will follow in the event the guarantee is reduced, suspended, or terminated. Key policies of this subpart are:

Section 3565.51 Eligible Loans and Advances

The Agency will guarantee a permanent loan or a combination construction and permanent loan. The Agency will not guarantee a construction loan that will not be converted into a permanent loan with an Agency guarantee. The construction loan *may not exceed 12 months*. The Agency will guarantee construction contracts (not to exceed 90 percent of the work in place) which have credit enhancements, such as an acceptable irrevocable letter of credit or pledge of collateral or both, to protect the government's guarantee. The Agency believes that providing construction guarantees will foster greater participation in the program, especially in many rural areas which suffer from a lack of available mortgage credit.

Section 3565.52 Extent of Guarantee

The Agency will guarantee repayment of an amount not to exceed 90 percent of the total unpaid principal and

interest of the loan but, in all cases, not more than 90 percent of the original principal amount. Any losses would be based on a pro-rata sharing of the risk between the Agency and the lender. For example: assume the total development cost is $1,000,000, with the original loan principal amount being 90 percent of the total development cost or $900,000. The Agency guarantees 90 percent of $900,000, providing a maximum guarantee equal to $810,000. If this loan were liquidated and the property sold for $600,000, the claim would be for $270,000 ($900,000-$600,000=$300,000 × 90 percent = $270,000). The lender's loss would be $30,000.

Section 3565.53 Guarantee Fees

At the time of issuance of a loan guarantee under this program, the Agency will collect an initial guarantee fee equal to 100 basis points (1 percent) of the guaranteed principal obligation of the loan from the lender. The Agency will also collect an annual servicing fee of 50 basis points (½ percent) based on the outstanding principal and interest of the guarantee portion of the loan on the first and each subsequent anniversary of the loan as long as the guarantee remains outstanding. These fees are fairly standard in the industry. They were used under the section 538 demonstration programs and found to be acceptable. They also significantly reduce the cost of the program.

Subpart C—Lender Requirements

This subpart provides the Agency policy on types of lenders and their eligibility requirements for participation in the program. Lender review and approval for participation in the program is covered in this subpart. A lender must be eligible and approved to participate in the program. This subpart also covers a lender's ongoing eligibility requirements and responsibilities.

§ 3565.101 Responsibility of lenders

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. In exceptional circumstances the Agency, in its sole discretion, may permit the transfer of servicing from the originating lender to a servicer.

Section 3565.102 Lender Eligibility

Those lenders currently approved and considered eligible by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Members, or the Department of Housing and Urban Development for guaranteed loan programs supporting multifamily housing are included as eligible lenders for this program. In addition, State Housing Finance Agencies (HFAs) are also considered eligible to participate in the 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. Other lenders have the opportunity to enter into a correspondent bank relationship with approved lenders in order to participate in the program. The Agency is striving to have as broad a pool of eligible lenders as possible.

Section 3565.103 Approval Requirements

To become an approved lender, eligible lenders (see § 3565.102) must meet a set of requirements for ongoing participation in the program. The Agency will establish and maintain a "list of approved lenders." The Agency will establish threshold requirements for becoming an approved lender and then require annual certification to show compliance with the continuing requirements for retaining the status of approved lender. The Agency "approved lender" list and review procedures meet the legislative requirements without placing unnecessary burden on the lenders participating or wanting to participate in the program.

The Agency is also considering requiring that approved lenders have computer systems that comply with year 2000 technology. The Agency is specifically interested in comments on such an eligibility requirement, the potential vulnerability to the servicing of a guaranteed portfolio with systems that are not year 2000 compliant, the potential vulnerability to the Agency, and the requirement's impact on lenders participation in the program.

Subpart D—Borrower Eligibility Requirements

This subpart contains the basic eligibility and loan underwriting requirements for loans on which an Agency guarantee is requested. It also contains identity of interest requirements, limitations for borrowers, as well as required certifications. These reinforce the Agency's intention not to re-underwrite the loan when borrower thresholds are met. Subparts H and I of this part outline the Agency's broad oversight responsibilities of the lender, the borrower and the project.

Subpart E—Loan Requirements

This subpart provides the Agency's direction to the lender in evaluating loans for compatibility with GRRHP. Also provided in this subpart are acceptable loan rates and terms. Key policies of this subpart are:

Section 3565.202 Tenant Eligibility and Section 3565.203 Restrictions on rents.

The Agency recognizes that many of the proposals seeking a guarantee under this program may have alternate financing sources that will be more restrictive in terms of income limits for eligible tenants. The law establishes a mandate to serve low and moderate-income families. Therefore, the rent cap for initial occupancy corresponds to the maximum "affordable" rent (based on legislated standard of 30 percent of income for rent and utilities) for moderate-income families. After initial occupancy, a tenant's income may exceed these limits; however, the Agency plans to restrict the average rents, including utilities, for the overall project to no more than 30 percent of 100 percent of area median income for the term of the loan. This is intended to assure broader marketability and longer occupancy by low-and moderate-income families. Lenders will be required to provide an annual rent certification, and the Agency intends to monitor rents.

Section 3565.204 Maximum Loan Amount

The enabling legislation mandates that the maximum loan amount eligible for guarantee involve a principal amount (including initial service charges, appraisal, inspection, and other reasonable fees) not to exceed 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities (whichever is less) for a borrower that is a nonprofit organization or an agency or body of any State or local government. For a borrower that is a for-profit entity, the principal amount eligible for guarantee may be up to 90 percent of the development costs of the housing and related facilities or the value of the housing and facilities (whichever is less). In order to contain costs and keep project units modest in design and amenities, the Agency has set a cap for such part of the property as may be attributable to dwelling use equal to the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which has built-in flexibility for high and low cost markets.

As with other multifamily housing programs, loans are subject to a review conducted in conjunction with the applicable tax credit administration entity to determine if the proposal is in conformance with the Agency's subsidy layering requirements under its rural rental housing direct loan program (see 7 CFR 1944.213). The Agency will not guarantee a loan which is for more than the minimum amount of assistance necessary to make the complex financially feasible.

Section 3565.207 Form of Lien

The enabling legislation mandates that loans guaranteed under this program shall be secured by a first mortgage on the housing and related facilities for which the loan is made, or be secured by a parity lien in the case where the loan upon which the Agency guarantee is requested is not the primary funding source.

Section 3565.208 Maximum Loan Term

The enabling legislation mandates that loans must be completely amortized by periodic payments for a term not to exceed 40 years. A fixed rate of interest must be agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Administrator.

Section 3565.210 Maximum Interest Rate

The maximum allowable rate will be set in the annual NOFA as a number of 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. Priority may be given to proposals that have rates lower than the maximum, with the lowest number of basis points receiving the highest priority.

Section 3565.211 Interest Credit

The law provides that, for at least 20 percent of the loans made under this program, the Agency shall provide the borrower with assistance in the form of interest credits to the extent necessary to reduce the rate of interest to the Applicable Federal Rate (AFR), as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986. For the FY 1997 demonstration program, the AFR was 6.25 percent. The Agency intends to limit use of this authority to no more than a guarantee of $1.5 million per complex in order to maximize available budget authority and assist more rural residents. This policy is also necessary for program management and budgeting of the interest credit available in any fiscal year.

Section 3565.214 Release of Liability

The legislation imposes a restriction of non-assumability by a party other than the original borrower when any portion of the principal obligation or interest remains outstanding with a GRRHP loan. The borrower 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 non-recourse basis. The lender should make the decision about whether to make a recourse or non-recourse loan.

Subpart F—Property Requirements

The guidance in the section provides direction for the lender and the borrower on property requirements and contains the Agency's overall policy on housing design and standards. Flexibility is provided to meet needs of the rural communities in which the housing is to be located. Key policies of this subpart are:

Section 3565.251 Eligible Property

The Agency is required to guarantee loans on units located in rural areas as defined in 7 CFR 3550.10. Each State Director is responsible for designating the rural area for his or her state and providing such information to the public upon request. The definition of a rural area, in part, is one that is located in a place of 10,000 population or less; or a place of 20,000 population or less that is not associated with a Metropolitan Statistical Area. The Agency's direct rural rental housing program's requirements on prioritizing and designating most needy places are not applicable to the guarantee program.

Section 3565.252 Housing Types

Complexes may contain modular or manufactured units, that are attached, detached, semi-detached, row houses, or multifamily structures. The Agency proposes to guarantee proposals for new construction or acquisition with rehabilitation of at least $15,000 per unit. Refinancing of existing housing and indebtedness is not an authorized purpose. The portion of the guaranteed funds for acquisition with rehabilitation is limited to 25 percent of the program authority. The Agency's objective, consistent with the enabling legislation, is to expand the housing stock. New construction is typically more cost effective in both the short and long term.

Subpart G—Processing Requirements

This subpart establishes the loan origination, underwriting and appraisal standards, as well as the allowable fees, processing steps, guarantee process, and closing requirements. The requirements for lender loan processing and project servicing, management and disposition are clearly listed in this subpart. Key policies of this subpart are:

Section 3565.303 Issuance of Loan Guarantee

In order to reduce the Agency risk and encourage the lender and borrower to provide the necessary housing as quickly as possible, the Agency will only issue the loan guarantee when a final certificate of occupancy and an acceptable level of occupancy has been reached. The Agency will require the lender, as part of the guarantee package for the permanent loan, to certify that the appropriate occupancy has been reached and that the final certificate of occupancy has been issued.

Subpart H—Project Management

This subpart contains the required project management thresholds. Key policies are:

Section 3565.351 Project Management

The enabling legislation requires the Agency to provide tenant protection. The Agency currently has regulations for tenant protection under the direct program and intends to provide tenants in units financed with a loan guarantee the same protections already contained in 7 CFR part 1944, subpart L. The borrower must inform tenants in writing of these rights.

Section 3565.352 Preservation of Affordable Housing

Enabling legislation requires the placement of "use restrictions" on the property so that the housing remains available for initial occupancy by low- and moderate-income households for the original term of the guaranteed loan. This requirement will be included in a deed restriction or other instrument acceptable to the Agency.

Subpart I—Servicing Requirements

The minimum requirements for servicing responsibilities are listed in this subpart. The Agency has divided the servicing into the lender's responsibilities and the borrower's responsibilities. While the Agency intends to maintain prudent oversight responsibility for the program, the rules attempt to balance the need for quality servicing while providing a reasonable impact on the lender. Key policies of this subpart are:

Section 3565.401 Servicing Objectives

The following four servicing objectives provide the foundation for all of the servicing on the guaranteed loan.

(1) Protecting the interests of tenants,

(2) Preserving the value of the loan and real estate,

(3) Avoiding or limiting potential loss to the lender and Agency, and

(4) Furthering program objectives.

Subpart J—Assignment, Conveyance and Claims

This subpart reflects the Agency's intent to make this product compatible with the other products that exist on the secondary market. The enabling legislation is silent on most of the areas under this subpart. Therefore, the Agency looked to guarantee programs of other Federal and government sponsored entities for guidance and models. Advice and recommendations in this area are welcome. Key policies of this subpart are:

Section 3565.453 Disposition of the Property

The lender is responsible for liquidation of the security in most cases prior to filing a claim for payment under the guarantee. Foreclosure action will be taken by the lender, under state law. The Agency provides direction in this subpart to the lender in coordinating the liquidation of the security with the Agency.

Section 3565.455 Alternative Disposition Methods

The Agency authorizes alternative methods for disposition of the security, such as assignment or conveyance to the Agency, but these methods may be used at the Agency's sole discretion. At this time, the Agency would view these methods as unusual for disposition of the security.

Section 3565.456 Filing a Claim

The Agency will look to the lender to dispose of the property before filing a final claim for the guaranteed portion of allowable losses. This is consistent with other guarantee programs and industry standards.

Also included within this document is an amendment to 7 CFR part 1940, subpart L which establishes the formula for allocation of funds to Rural Development State Offices.

Paperwork Reduction Act

The reporting requirements contained in this regulation have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0575–0174. However, in accordance with the Paperwork Reduction Act of 1995, RHS will seek standard OMB approval of the reporting requirements contained in this regulation and hereby opens a 60-day public comment period.

On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996." One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program, adding the program to the Housing Act of 1949. 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 or acquisition with rehabilitation of at least $15,000 per unit.

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; however, rents, including utilities, are restricted to no more than 30 percent of the 115 percent of area median income for the term of the loan.

Units must be located in areas considered eligible as defined in 7 CFR 3550.10.

The Secretary is authorized under section 510(k) of the Housing Act of 1949 to prescribe regulations to ensure that these federally funded loans are made to eligible applicants for authorized purposes. The lender must evaluate the eligibility, cost, benefits, feasibility, and financial performance of the proposed project. The information submitted by the lender to the Agency is used by the Agency to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .39 man hours per response.

Respondents: Profit and nonprofit organizations and public bodies.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 33.

Estimated Total Annual Burden on Respondents: 644.39 hours.

The subject regulation is published for public review and comment. Additional copies of the interim rule or copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, at (202) 692–0039.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' 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.

All responses with regard to paperwork burden will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250–0742.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 3565

Bankruptcy, Banks, banking Civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Therefore, chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1940—[Amended]

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

2. Section 1940.560 is added to read as follows:

§ 1940.560 Guarantee Rural Rental Housing Program.

When funding levels are under $100,000,000, all funds will be held in a National Office reserve and made available administratively in accordance with the Notice of Funding Availability (NOFA) and program regulations. When program levels are sufficient for a nationwide program, funds are allocated based upon the following criteria and weights.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart .

Each factor will receive a weight respectively of 40%, 40% and 20%. The criteria used in the basic formula are:

(1) State's percentage of National rural population,

(2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and

(3) State's percentage of National average cost per unit. Data source for the first two of these criterion are based on the latest census data available. The third criterion is based on the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%)+ (criterion No. 1 × weight of 40%)+ (criterion No. 1 × weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c).

(d) *Transition formula.* See § 1940.552(d).

(e) *Base allocation.* See § 1940.552(e). Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f). Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h).

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by the State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

CHAPTER XXXV-RURAL HOUSING SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

3. Part 3565 is added to read as follows:

PART 3565—Guaranteed Rural Rental Housing Program

Subpart A—General Provisions

Sec.

Subpart B—Guarantee Requirements

Subpart C—Lender Requirements

Subpart D—Borrower Eligibility Requirements

Subpart E—Loan Requirements

Subpart F—Property Requirements

Subpart G—Processing Requirements

Subpart H—Project Management

Subpart I—Servicing Requirements

Subpart J—Assignment, Conveyance, and Claims

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

§ 3565.1 Purpose.

The purpose of the Guaranteed Rural Rental Housing Program (GRRHP) is to increase the supply of affordable rural rental housing, through the use of loan guarantees that encourage partnerships between the Rural Housing Service, private lenders and public agencies.

§ 3565.2 Applicability and authority.

The regulation prescribes the policies, authorizations, and procedures for the guarantee of multifamily loans under section 538 of the Housing Act of 1949.

§ 3565.3 Definitions.

Administrator. The Administrator of the Rural Housing Service, or his or her designee.

Agency. The Rural Housing Service, or a successor agency.

Allowable claim amount. The total losses incurred by the lender, as calculated pursuant to subpart J of this part.

Applicable Federal Rate (AFR). The interest rate set by the federal government for federal financing programs pursuant to section 42 of the Internal Revenue Code.

Approved lender. An eligible lender who has been authorized by the Agency to originate and service guaranteed multifamily loans under the program.

Assignment. The delivery by a lender to the Agency of the note and any other security instruments securing the guaranteed loan; and any and all liens, interest, or claims the lender may have against the borrower.

Assistance. Financial assistance in the form of a loan guarantee or interest credit received from the Agency.

Borrower. The individuals or entities responsible for repaying the loans.

Claim. The presentation to the Agency of a demand for payment for losses incurred on a loan guaranteed under the program.

Combination construction and permanent loan. The Agency may guarantee a construction contract which has credit enhancements to protect the Government's interest. The construction guarantee will be converted to a permanent guarantee when construction is completed and the requirements contained in the conditional commitment are met.

Conditional commitment. The written commitment by the Agency to guarantee a loan subject to the stated terms and conditions.

Correspondent relationship. A contractual relationship between an approved lender and a non-approved lender or mortgage broker in which the correspondent performs certain origination, underwriting or servicing functions for the approved lender.

Default. Failure by a borrower to meet any obligation or term of a loan, grant, or regulatory agreement, or any program requirement.

Delinquency. Failure to make a timely payment under the terms of the promissory note or regulatory agreement.

Department of Housing and Urban Development (HUD). A federal agency which may be a partner in some of the Agency guarantees.

Due diligence. The process of evaluating real estate in the context of a real estate transaction for the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Eligible borrower. A borrower who meets the requirements of subpart D of this part.

Eligible lender. A lender who meets the requirements of subpart C of this part or any successor regulation.

Eligible loan. A loan that meets the requirements of subpart E of this part or any successor regulation.

Eligible rural area. An eligible rural area is an area which meets the requirements of part 3550 of this chapter or any successor regulation.

Fannie Mae. A Federally chartered—publicly owned enterprise created by Congress to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

Federal Home Loan Bank System. A system of member savings and loans, banks and other lenders whose primary business is the making of housing loans.

Final claim payment. The amount due to the lender (or the Agency) after disposition of the collateral is complete and the proceeds from liquidation, as well as any other claim payments, are applied against the allowable claim amount.

Foreclosure. The process by which the ownership interest of a borrower in a mortgaged property is extinguished and the security is liquidated with the proceeds applied to the loan.

Freddie Mac. A Federally chartered, publicly owned enterprise created to purchase, sell or otherwise facilitate the purchase or sale of mortgages in the secondary mortgage market.

GRRHP. Guaranteed Rural Rental Housing Program.

Guarantee fees. The fees paid by the lender to the Agency for the loan guarantee.

(1) An initial guarantee fee is due at the time the guarantee is issued.

(2) An annual guarantee fee is due at the beginning of each year that the guarantee remains in effect.

Guaranteed loan. Any loan for which the Agency provides a loan guarantee.

Housing Finance Agency (HFA). A state or local government instrumentality authorized to issue housing bonds or otherwise provide financing for housing. Identity of interest. With respect to a project, an actual or apparent financial interest of any type, that exists or will exist among the borrower, contractor, lender, syndicator, management agent, suppliers of materials or services, including professional services, or vendors (including servicing and property disposal), in any combination of relationships which may result in an actual or perceived conflict of interest

Income eligibility. A determination that the income of a tenant at initial occupancy does not exceed 115 percent of the area median income as such area median income is defined by HUD or a successor agency.

Interest credit. A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the AFR.

Land lease. A written agreement between a landowner and a borrower for the possession and use of real property for a specified period of time.

Lease. A contract containing the rights and obligations of a tenant or cooperative member and a borrower, including the amount of the monthly occupancy charge and other terms under which the tenant will occupy the housing.

Lender. A bank or other financial institution, including a housing finance agency, that originates or services the guaranteed loan.

Lender Agreement. The written agreement between the Agency and the lender containing the requirements the lender must meet on a continuing basis to participate in the program.

Loan. A mechanism by which a lender funds the acquisition and development of a multifamily project. A loan in this context is secured by a mortgage executed by the lender and borrower.

Loan guarantee. A pledge to pay part of the loss incurred by a lender in the event of default by the borrower.

Loan guarantee agreement. The written agreement between the Agency and the lender containing the terms and conditions of the guarantee with respect to an individual loan.

Loan participation. A loan made by more than one lender wherein each lender funds an individual portion of the loan.

Loan-to-value ratio. The amount of the loan divided by the appraised market value of the project.

Maximum guarantee payment. The maximum payment by the Agency under the guarantee agreement computed by applying the guarantee percentage times the allowable claim amount, but not to exceed original principal amount.

Mortgage. A written instrument evidencing or creating a lien against real property for the purpose of providing collateral to secure the repayment of a loan. For program purposes, this may include a deed of trust or any similar document.

Multifamily project. A project designed with five or more living units.

NOFA. A "Notice of Funding Availability" published in the **Federal Register** to inform interested parties of the availability of assistance and other non-regulatory matters pertinent to the program.

Non-monetary default. A default that does not involve the payment of money.

Note. Any note, bond, assumption agreement, or other evidence of indebtedness pertaining to a guaranteed loan.

Office of Inspector General (OIG). The agency of USDA established under the Inspector General Act.

Payment effective date. For the month payment is due, the day of the month on which payment will be effectively applied to the account by the lender, regardless of the date payment is received.

Permanent loan. A loan that becomes effective upon Agency acceptance of a lender certification of an acceptable minimum level of occupancy.

Prepayment. The payment of the outstanding balance on a loan prior to the note's maturity date.

Project. The total number of rental housing units and related facilities subject to a guaranteed loan that are operated under one management plan and one Regulatory Agreement.

Program requirements. Any requirements contained in any loan document, guarantee agreement, statute, regulation, handbook, or administrative notice.

Promissory Note. See "Note".

Qualified alien. For the purposes of this part, qualified alien refers to any person lawfully admitted into the country who meets the criteria of 42 U.S.C. 1436a.

Real Estate Owned. Denotes real estate that has been acquired by the lender or the Agency (often known as "inventory property").

Recourse. The lender's right to seek satisfaction from the borrower's personal financial resources or other resources for monetary default.

Regulatory Agreement. The agreement that establishes the relationship among the Agency, the lender, and the borrower; and contains the borrower's responsibilities with respect to all aspects of the management and operation of the project.

RHS. The Rural Housing Service within the Rural Development mission area, or a successor agency, which administers section 538 guarantees.

Rural area. A geographic area as defined in section 520 of the Housing Act of 1949.

Rural Development. A mission area within USDA which includes RHS, Rural Utilities Service, and Rural Business-Cooperative Service.

Servicing. The broad scope of activities undertaken to manage the performance of a loan throughout its term and to assure compliance with the program requirements.

Single asset ownership. A borrower who owns only one project.

Surplus cash. The borrower's remaining funds at the project's fiscal year end, after making all required payments, excluding required reserves and escrows.

Tenant. The individual that holds the right to occupy a unit in accordance with the terms of a lease executed with the project owner.

U.S. citizen. An individual who resides as a citizen in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marinas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

§ 3565.4 Availability of assistance.

The Agency's authority to enter into commitments, guarantee loans, or provide interest credits is limited to the extent that appropriations are available to cover the cost of the assistance. The Agency will publish a NOFA in the **Federal Register** to notify interested parties of the availability of assistance.

§ 3565.5 Ranking and selection criteria.

(a) *Threshold criteria.* Applications for loan guarantee submitted by lenders must include a loan request for a project that meets all of the following threshold criteria:

(1) The project must involve an owner and a development team with qualifications and experience sufficient to carry out development, management, and ownership responsibilities, and the owner and development team must not be under investigation or suspension from any government programs;

(2) The project must involve the financing of a property located in an eligible rural area;

(3) Demonstrate a readiness, for the project to proceed, including submission of a complete application for a loan guarantee and evidence of financing;

(4) Demonstrate market and financial feasibility; and

(5) Include evidence that the credit risk is reasonable, taking into account conventional lending practices, and factors related to concentration of risk in a given market and with a given borrower.

(b) *Priority projects.* The Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce any assistance set aside and selection criteria in the NOFA.

§ 3565.6 Exclusion of tax-exempt debt.

Consistent with Administration Policy, tax-exempt financing cannot be used as a source of capital for the guaranteed loan.

§ 3565.7 Agency environmental requirements.

The Agency will take into account potential environmental impacts of proposed projects by working with applicants, other federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. Actions taken by the Agency under this subpart are subject to an environmental review conducted in accordance with the requirements of 7 CFR part 1940, subpart G or any successor regulations.

§ 3565.8 Civil rights.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender or borrower, will be conducted without regard to race, color, religion, sex, familial status, marital status, national origin, age, or disability, pursuant to 7 CFR part 15 (1998). This includes any actions in the sale, rental or advertising of the dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance. See the Fair Housing Act, as amended, 42 U.S.C. 3601–3619 (1994); see also the Equal Credit Opportunity Act, 42 U.S.C. 1691–1691(f) (1994 and Supp. I, 1995). It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be necessary to afford the individual full enjoyment of the unit.

(b) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(c) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

§ 3565.9 Compliance with federal requirements.

The Agency and the lender are responsible for ensuring that the application is in compliance with all applicable federal requirements, including the following specific statutory requirements:

(a) *Intergovernmental review.* 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities", or successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1940–J (available in any Rural Development Office).

(b) *National flood insurance.* The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements.* For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act; Executive Order 11738; and EPA regulations at part 32, of title 40.

(d) *Historic preservation requirements.* The provisions of 7 CFR part 1901, subpart F or successor regulation.

(e) *Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act; and the Americans with Disabilities Act.*

(f) *Lead-based paint requirements.* The provisions of 7 CFR part 1924, subpart A, or successor regulation.

§ 3565.10 Conflict of interest.

(a) *Objective.* It is the objective within the Rural Development mission area to maintain the highest standards of honesty, integrity, and impartiality by employees.

(b) *Rural Development requirement.* To reduce the potential for employee conflict of interest, all Rural Development activities will be conducted in accordance with 7 CFR part 1900, subpart D, or successor regulation by Rural Development employees who:

(1) Are not themselves a beneficiary;

(2) Are not family members or known relatives of any beneficiary; and

(3) Do not have any business or personal relationship with any beneficiary or any employee of a beneficiary.

(c) *Rural Development employee responsibility.* Rural Development employees must disclose any known relationship or association with a lender or borrower or their agents, regardless of whether the relationship or association is known to others. Rural Development employees or members of their families may not purchase a Real Estate Owned property, security property from a borrower, or security property at a foreclosure sale.

(d) *Loan closing agent responsibility.* Loan closing agents (or members of their families) who have been involved with a particular property are precluded from purchasing such properties.

(e) *Lender and borrower responsibility.* Lenders, borrowers, and their agents must identify any known relationship or association with a Rural Development employee.

§§ 3565.11–3565.12 [Reserved].

§ 3565.13 Exception authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives.

§ 3565.14 Review and appeals.

Whenever RHS makes a decision that is adverse to a lender or a borrower, RHS will provide written notice of such adverse decision and of the right to a USDA National Appeals Division hearing in accordance with 7 CFR part 11 or successor regulations. The lender or borrower may request an informal review with the decision maker and the use of available alternative dispute resolution or mediation programs as a means of resolution of the adverse decision. Any adverse decision, whether appealable or non-appealable may also be reviewed by the next level RHS supervisor. Adverse decisions affecting project tenants or applicants for tenancy will be handled in accordance with 7 CFR part 1944, subpart L or successor regulations.

§ 3565.15 Oversight and monitoring.

The lender, borrower, and all parties involved in any manner with any guarantee under this program must cooperate fully with all oversight and monitoring efforts of the Agency, Office of Inspector General, the U.S. General Accounting Office, and the U.S. Department of Justice or their representatives including making available any records concerning this transaction. This includes the annual eligibility audit and any other oversight or monitoring activities. If the Agency implements a requirement for an electronic transfer of information, the lender and borrower must cooperate fully.

§ 3565.16 [Reserved]

§ 3565.17 Demonstration programs.

To test ways to expand the availability or enhance the effectiveness of the guarantee program, or for similar purposes, the Agency may, from time to time, propose demonstration programs that use loan guarantees or interest credit. Toward this end, the Agency may enter into special partnerships with lenders, financial intermediaries, or others to carry out one or more elements

of a demonstration program. Demonstration programs will be publicized by notices in the Federal Register.

§§ 3565.18–3565.49 [Reserved]

§ 3565.50 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart B—Guarantee Requirements

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an approved lender, the Agency will commit to providing a guarantee for a permanent loan or a combination construction and permanent loan, subject to the availability of funds. The Agency will not guarantee a construction loan that is not a combination construction and permanent loan.

§ 3565.52 Extent of the guarantee.

A guarantee of a permanent loan will be made once the project has attained a minimum level of acceptable occupancy as determined by the lender with Agency concurrence. The required occupancy level must be reached before the commitment for a loan guarantee, including any extensions, expires. For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period (which can not exceed 12 months). The guarantee of construction loan advances will convert to a permanent loan guarantee once the required level of occupancy has been reached.

(a) *Maximum guarantee amount.* The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the guarantee document. The Agency will guarantee construction contracts not to exceed 90 percent of the work in place which have credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(1) Surety bonding or performance and payment bonding are the preferred credit enhancement;

(2) An irrevocable letter of credit acceptable to the Agency; and

(3) A pledge by the lender of acceptable collateral.

(b) *Lesser guarantee amount.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

(c) *Cancellation or reduction to the guarantee amount.* In cases of fraud, misrepresentation, abuse, negligence, or failure to follow the terms of the guarantee or the note, the Agency may cancel the guarantee.

§ 3565.53 Guarantee fees.

As a condition of receiving a loan guarantee, the Agency will charge the following guarantee fees to the lender.

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to 100 basis points (1 percent) of the principal amount of the loan. The fee will be collected at the time of commitment.

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. Each calendar year, this fee will be collected in advance, beginning on the first anniversary of the loan.

(c) *Surcharge for guarantees on construction advances.* The Agency may, at its sole discretion, charge an additional fee on the portion of the loan advanced during construction. This fee will be charged in advance at the start of construction and will be announced in NOFA before loan approval.

§ 3565.54 Transferability of the guarantee.

A lender must receive the Agency's approval prior to any sale or transfer of the loan guarantee.

§ 3565.55 Participation loans.

Loans involving multiple lenders are eligible for a guarantee when one of the lenders is an approved lender and agrees to act as the lead lender with responsibility for the loan under the loan guarantee agreement.

§ 3565.56 Suspension or termination of loan guarantee agreement.

A guarantee agreement will terminate when one of the following actions occurs: (In accordance with subpart H of this part, use restrictions on the property will remain if the following actions take place prior to the term of the loan and RHS determines the restrictions apply.)

(a) *Voluntary termination.* A lender and borrower voluntarily request the termination of the loan guarantee.

(b) *Agency withdrawal of guarantee.* The Agency withdraws the loan guarantee in the event of fraud, misrepresentation, abuse, negligence, or failure to meet the program requirements.

(c) *Mortgage pay-off.* The loan is paid.

(d) *Settlement of claim.* Final settlement of the claim.

§ 3565.57 Modification, extension, reinstatement of loan guarantee.

To protect its interest or further the objectives of the program, the Agency may, at its sole discretion, modify, extend, or reinstate a loan guarantee. In making this decision the Agency will consider potential losses under the program, impact on the tenants and the public reaction that may be received regarding the action. Further, the Agency may authorize a guarantee on a new loan that is originated as a part of a workout agreement.

§§ 3565.58–3565.99 [Reserved]

§ 3565.100 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart C—Lender Requirements

§ 3565.101 Responsibility of lenders.

A participating lender must originate and service a guaranteed loan in accordance with the regulation and program requirements throughout the life of a loan or guarantee, whichever is less. When it is in the best interests of the Agency, the Agency may permit the transfer of servicing from the originating lender to a servicer.

§ 3565.102 Lender eligibility.

An eligible lender must be a licensed business entity or HFA in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

(a) Meet the qualifications of, and be approved by, the Secretary of HUD to make multifamily housing loans that are to be insured under the National Housing Act;

(b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to such corporations;

(c) Be a state or local HFA, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close,

service, manage, and dispose of multifamily housing loans in a prudent manner;

(d) Be a lender who meets the requirements for Agency approval contained in this subpart and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(e) Be a lender who meets the following requirements in addition to the other requirements of this subpart and of subpart I of this part:

(1) Have qualified staff to perform multifamily housing servicing and asset management;

(2) Have facilities and systems that support servicing and asset management functions; and

(3) Have documented procedures for carrying out servicing and asset management responsibilities.

§ 3565.103 Approval requirements.

The Agency will establish and maintain a "list of approved lenders". To be an approved lender, eligible lenders must meet the following requirements and maintain them on a continuing basis at a level consistent with the nature and size of their portfolio of guaranteed loans.

(a) *Commitment.* A lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.

(b) *Audited statement.* A lender must provide the Agency with an annual audited financial statement conducted in accordance with generally accepted government auditing standards.

(c) *Previous participation.* A lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.

(d) *Ongoing requirements.* A lender must meet the following requirements at initial application and on a continuing basis thereafter:

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating by a rating agency (such as Standard and Poor's Corporation);

(2) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;

(3) A minimum of two years experience in originating and servicing multifamily loans;

(4) A positive record of past performance when participating in RHS or other federal loan programs;

(5) Adequate staffing and training to perform the program obligations; the head underwriter must have 3 years of experience and all staff must receive annual multifamily training;

(6) Demonstrated overall financial stability of the business over the past five years;

(7) Evidence of reasonable and prudent business practices for management of the program; and

(8) No negative information on Dunn & Bradstreet or similar type report.

§ 3565.104 Application requirements.

Eligible lenders must submit a lender approval application, in a format prescribed by the Agency. The lender approval application submission must occur at the time the lender submits its first application for a loan guarantee, or its first application to purchase a guaranteed loan. The application must include documentation of lender compliance with § 3565.103. A non-refundable application fee will be charged for each review of a lender's application. The amount of the fee will be announced in NOFA.

§ 3565.105 Lender compliance.

A lender will remain an approved lender unless terminated by the Agency. To maintain approval, the lender must comply with the following requirements.

(a) Maintain eligibility in accordance with § § 3565.102 and 3565.103;

(b) Comply with all applicable statutes, regulations, and procedures;

(c) Inform the Agency of any material change in the lender's staffing, policies and procedures, or corporate structure;

(d) Cooperate fully with all program or Agency monitoring and auditing policies and procedures, including the Agency's annual audit of approved lenders; and

(e) Maintain active participation in the multifamily guaranteed loan program by initiating a new loan guarantee or holding a loan guaranteed under this program.

§ 3565.106 Construction lender requirements.

A lender making a construction loan, as part of a combination construction and permanent loan, must demonstrate an ability to originate and service construction loans, in addition to meeting the other requirements of this subpart.

§ 3565.107 [Reserved].

§ 3565.108 Responsibility for actions of agents and mortgage brokers.

An approved lender is responsible for the actions of its agents and mortgage brokers.

§ 3565.109 Minimum loan prohibition.

A lender must not establish a minimum loan amount for loans under this program.

§ 3565.110 Insolvency of lender.

The Agency may require a lender to transfer a guaranteed loan or loans to another approved lender prior to a determination of insolvency by the lender. If the lender fails to transfer a loan when required, the guarantee will be considered null and void.

§ 3565.111 Lobbying activities.

An approved lender must comply with RD Instruction 1940-Q (available in any Rural Development Office) regarding lobbying activities.

§§ 3565.112–3565.149 [Reserved]

§ 3565.150 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart D—Borrower Eligibility Requirements

§ 3565.151 Eligible borrowers.

Guaranteed loans must be made to an eligible borrower whose intention is to provide and maintain rural rental housing. The ownership entity must be a valid entity in good standing under the laws of the jurisdiction in which it is organized. Eligible borrowers shall include individuals, corporations, state or local public agencies or an instrumentality thereof, partnerships, limited liability companies, trusts, Indian tribes, or any organization deemed eligible by the Agency. Eligible borrowers must be U.S. citizens or permanent legal residents; a U.S. owned corporation, or a limited liability company, or partnership in which the principals are U.S. citizens or permanent legal residents.

§ 3565.152 Control of land.

At time of application, the lender must have evidence of site control by the borrower (option to purchase, lease, deed or other evidence acceptable to the Agency). At the time of loan closing, the lender's closing docket must provide documentary evidence that the borrower

owns or has a long-term lease on the land on which the housing is or will be located. The form of ownership or the leasehold agreement must meet Agency requirements. Notwithstanding any investment in the site, the site may not be accepted based on the Agency's environmental assessment.

§ 3565.153 Experience and capacity of borrower.

At the time of application, the lender must certify that the borrower:

(a) Has the ability and experience to construct or rehabilitate multifamily housing that meets the requirements established by the Agency, the lender and the loan agreement;

(b) Has the legal and financial capacity to meet all of the obligations of the loan; and

(c) Has the ability and experience to meet the property management requirements established by the Agency, the lender, and the loan agreement.

§ 3565.154 Previous participation in state and federal programs.

Loans to borrowers who are delinquent on a federal debt may not be guaranteed. Furthermore, borrowers or principals thereof who have defaulted on state or local government loans will not be eligible for a guarantee unless the Agency determines that the default was beyond the borrower's control, and that the identifiable reasons for the default no longer exist. At the time of application, the lender must obtain from the borrower a certification that the borrower is not under any state or federal order suspending or debarring participation in state or federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

§ 3565.155 Identity of interest.

At the time of application, the lender must certify that it has disclosed any and all identity of interest relationships and preexisting conditions with respect to its relationships and that of the borrower, or that no identity of interest relationships exists. Identity of interest relationships include any financial or other relationship that exists or will exist between a lender, borrower, management agent, supplier, or any agent of any of these entities, that could influence, give the appearance of influencing or have the potential to influence the actions of the parties in carrying out their responsibilities under the program. Disclosure will be in a form and manner established by the Agency.

§ 3565.156 Certification of compliance with federal, state, and local laws and with Agency requirements.

At the time of application, the lender must obtain from the borrower a certification of compliance with all applicable federal, state, and local laws, and with Agency requirements regarding discrimination and equal opportunity in housing, including title VIII of the Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988. The borrower must also certify that it is not the subject of any federal, state, or local sanction or punitive action.

§§ 3565.157–3565.199 [Reserved]

§ 3565.200 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart E—Loan Requirements

§ 3565.201 General.

To be eligible for a guarantee, a loan must comply with the provisions of this subpart and be originated by an approved lender.

§ 3565.202 Tenant eligibility.

(a) *Limits on income of tenants.* The housing units subject to a guaranteed loan must be available for occupancy only by low or moderate-income families or individuals whose incomes at the time of initial occupancy do not exceed 115 percent of the area median income. After initial occupancy, a tenant's income may exceed these limits.

(b) *Citizenship status.* A tenant must be a United States citizen or a noncitizen who is a qualified alien as defined in § 3565.3.

§ 3565.203 Restrictions on rents.

The rent for any individual housing unit, including any tenant-paid utilities, must not exceed an amount equal to 30 percent of 115 percent of area median income, adjusted for family size. In addition, on an annual basis, the average rent for a project, taking into account all individual unit rents, must not exceed 30 percent of 100 percent of area median income, adjusted for family size.

§ 3565.204 Maximum loan amount.

(a) *Section 207(c) limits and exceptions.* For that part of the property that is attributable to dwelling use, the principal obligation of each guaranteed loan must not exceed the applicable maximum per-unit limitations under section 207(c) of the National Housing Act.

(b) *Loan-to-value limits.* (1) In the case of a borrower that is a nonprofit organization or an agency or body of any State, local or tribal government, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 97 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(2) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph (b)(1) of this section, each guaranteed loan must involve a principal obligation that does not exceed the lesser of 90 percent of:

(i) The development costs of the housing and related facilities, or

(ii) The lender's determination of value not to exceed the appraised value of the housing and facilities.

(3) To protect the interest of the Agency or to further the objectives of the program, the Agency may establish lower loan-to-value limits or further restrict the statutory maximum limits based upon its evaluation of the credit quality of the loan.

(c) *Necessary assistance review.* (1) A lender requesting a loan guarantee must review all loans to determine the appropriate amount of assistance necessary to complete and maintain the project. The lender shall recommend to the Agency an adjustment in the loan amount if appropriate as a result of this review.

(2) Where the project financing combines a guaranteed loan with Low-Income Housing Tax Credits or other Federal assistance, the project must conform to the policies regarding necessary assistance in 7 CFR part 1944, subpart E or successor provision.

§ 3565.205 Eligible uses of loan proceeds.

Eligible uses of loan proceeds must conform with standards and conditions for housing and facilities contained in 7 CFR part 1924, subpart A or successor provision, except that the Agency, at its sole discretion, may approve, in advance, a higher level of amenities, construction, and fees for projects proposed for a guaranteed loan provided the costs and features are reasonable and customary for similar housing in the market area.

(a) *Use of loan proceeds.* The proceeds of a guaranteed loan may be used for the following purposes relating to the project.

(1) New construction costs of the project;
(2) Moderate or substantial rehabilitation of buildings and acquisition costs when related to the rehabilitation of a building as described in paragraph (b) of this section;
(3) Acquisition of existing buildings, when approved by the Agency, for projects that serve a special housing need;
(4) Acquisition and improvement of land on which housing will be located;
(5) Development of on-site and off-site improvements essential to the use of the property;
(6) Development of related facilities such as community space, recreation, storage or maintenance structures, except that any high cost recreational facility, such as swimming pools and exercise clubs or similar facilities, must be specifically approved in advance by the Agency;
(7) Construction of on-site management or maintenance offices and living quarters for operating personnel for the property being financed;
(8) Purchase and installation of appliances and certain approved decorating items, such as window blinds, shades, or wallpaper;
(9) Development of the surrounding grounds, including parking, signs, landscaping and fencing;
(10) Costs associated with commercial space provided that:
(i) The project is designed primarily for residential use;
(ii) The commercial use consists of essential tenant service type facilities, such as laundry rooms, that are not otherwise conveniently available;
(iii) The commercial space does not exceed 10 percent of the gross floor area of the residential units and common areas, unless a higher level is specifically approved in writing by the Agency; and
(iv) The commercial activity is compatible with the use of the project and that the income is not more than 10 percent of the total annual operating income of the project.
(11) Costs for feasibility determination, loan application fees, appraisals, environmental documentation, professional fees or other fees determined by the Agency to be necessary to the development of the project;
(12) Technical assistance to and by non-profit entities to assist in the formation, development, and packaging of a project, or formation or incorporation of a borrower entity;
(13) Education programs for a board of directors, both before and after incorporation of a cooperative that will serve as the borrower;
(14) Construction interest accrued on the construction loan;
(15) Relocation assistance in the case of rehabilitation projects;
(16) Developers' fees; and
(17) Repaying applicant debts in the following cases:
(i) When the Agency authorizes in writing in advance the use of loan funds to pay debts for work, materials, land purchase, or other fees and charges before the loan is closed; or
(ii) When the Agency concurs in writing with a determination by the lender that costs for work, fees and charges incurred prior to loan application are integral to development of the guarantee application and project.
(b) *Rehabilitation requirements.* Rehabilitation work must be classified as either moderate or substantial as defined in exhibit K of 7 CFR part 1924, subpart A or a successor document. In all cases, the building or project must be structurally sound, and improvements must be necessary to meet the requirements of decent, safe, and sanitary living units. Applications must include a structural analysis, along with plans and specifications describing the type and amount of planned rehabilitation. The project as rehabilitated must meet the applicable development standards contained in 7 CFR part 1924, subpart A or a successor regulation, as well as any applicable historic preservation requirements. All proposed rehabilitation projects are subject to an environmental review completed in accordance with 7 CFR part 1940, subpart G or a successor regulation.

§ 3565.206 Ineligible uses of loan proceeds.

Loan proceeds must not be used for the following:
(a) Specialized equipment for training and therapy;
(b) Housing in military impact areas;
(c) Housing that serves primarily temporary and transient residents;
(d) Nursing homes, special care facilities and institutional type homes that require licensing as a medical care facility;
(e) Operating capital for central dining facilities or for any items not affixed to the real estate, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.;
(f) Payment of fees, salaries and commissions or compensation to borrowers (except developers' fees); or
(g) Refinancing of an outstanding debt, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program. The term and amount of any loan for refinancing must not exceed the maximum loan amount or term limits.

§ 3565.207 Form of lien.

The loan originated by the lender for a guarantee must be secured by a first lien against the property.

§ 3565.208 Maximum loan term.

(a) *Statutory term limit.* The lender may set the term of the loan, but in no instance may the term of a guaranteed loan exceed the lesser of 40 years or the remaining economic life of the project.
(b) *Prepayment of loans.* A guaranteed loan may be prepaid in whole or in part at the determination of the lender, and upon the lender's written notice to the Agency at least 30 days prior to the expected date of prepayment. The Agency will not pay any lockout or prepayment penalty assessed by the lender. The lender must certify the following in the notice of prepayment:
(1) The lease documents used by the borrower or its agent prohibit the abrogation of tenant leases in the event of prepayment; and
(2) The borrower has notified tenants of the request to prepay the loan, including notice of the prohibition against abrogation of the lease and the policy and procedure for handling complaints regarding compliance with the long-term use restriction as contained in subpart H of this part.

§ 3565.209 Loan amortization.

Each guaranteed loan must contain provisions for the complete amortization of the loan by periodic payments. The Agency will not guarantee a loan that comes due before expiration of its full amortization period, such as a balloon loan.

§ 3565.210 Maximum interest rate.

The interest rate for a guaranteed loan must not exceed the maximum allowable rate specified by the Agency in NOFA. Such rate must be fixed over the term of the loan.

§ 3565.211 Interest credit.

(a) *Limitation.* For at least 20 percent of the loans made during each fiscal year, the Agency will provide assistance in the form of interest credit, to the extent necessary to reduce the agreed-upon rate of interest to the AFR as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 7805, § 1.42–1T.
(b) *Selection criteria.* The Agency will select projects to receive interest credits using any of such criteria as the Agency

may establish for priority projects as contained in subpart A of this part.

§ 3565.212 Multiple guaranteed loans.

The Agency may guarantee more than one loan on any project if all guaranteed loans, in the aggregate, comply with these regulations, including without limitation:

(a) In the aggregate, loans do not exceed the maximum guaranteed loan amount and loan-to-value limits, as contained in § 3565.204;

(b) In the aggregate, loans are all to be secured equally by a first lien as the Agency may, at its sole discretion, determine necessary to ensure repayment of the loans; and

(c) If different lenders originate the loans, each lender has executed an intercreditor agreement in form and substance acceptable to the Agency; and

(d) The loans do no contain tax exempt financing.

§ 3565.213 Geographic distribution.

The Agency may refuse to guarantee a loan in an area where there is undue risk due to a concentration in the market of properties subject to a Agency guaranteed loan. The Agency will consider the credit quality of the loan and overall market conditions in making a determination of undue risk. If any of the Agency guaranteed loans in the market are experiencing vacancy rates in excess of 15% and the vacancy is due to market conditions, the Agency will invoke this provision and not guarantee the loan.

§ 3565.214 Release of liability.

Notwithstanding the transfer of the property for which the loan was made, borrowers may not be relieved of liability for a guaranteed loan if any portion of the principal or interest or any protective advance made on behalf of the borrower is outstanding.

§ 3565.215 Special conditions.

(a) Use of third party funds. As a condition of receiving a guaranteed loan, the Agency, or the lender if designated by the Agency, must review the terms and conditions of any secondary financing or funding of projects, including loans, capital grants or rental assistance.

(b) *Recourse.* If required by the lender, loans guaranteed under this program may be made on a recourse or nonrecourse basis, or with any personal or special borrower guarantees on collateralization.

§§ 3565.216–3565.249 [Reserved]

§ 3565.250 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart F—Property Requirements

§ 3565.251 Eligible property.

To be eligible for a guaranteed loan, a property must be used primarily for residential dwelling purposes and must meet the following requirements or the requirements of this subpart:

(a) *Property location.* All the property must be located in a rural area.

(b) *Minimum size of development.* The property must consist of at least five rental dwelling units.

(c) *Non-contiguous sites.* For a loan secured by two or more non-contiguous parcels of land, all sites must meet each of the following requirements:

(1) Located in one market area;

(2) Managed under one management plan with one loan agreement or resolution for all of the sites; and

(3) Consist of single asset ownership.

(d) *Compliance with Statutes.* All properties must comply with the applicable requirements in section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, the Americans with Disabilities Act, and other applicable statutes.

§ 3565.252 Housing types.

The property may include new construction or substantially rehabilitated existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency proposes to guarantee proposals for new construction or acquisition with rehabilitation of at least $15,000 per unit. The portion of the guaranteed funds for acquisition with rehabilitation is limited to 25 percent of the program authority.

§ 3565.253 Form of ownership.

The property must be owned in fee simple or be subject to a ground lease or other legal right in land acceptable to the Agency.

§ 3565.254 Property standards.

(a) *Housing quality and site and neighborhood standards.* The property must meet the site and neighborhood requirements established by the state or locality, and those standards contained under 7 CFR part 1924, subparts A and C or any successor regulations.

(b) *Third party assessments.* As part of the application for a guaranteed loan, the lender must provide documentation of qualified third parties' assessments of the property's physical condition and any environmental conditions or hazards which may have a bearing on the market value of the property. These assessments must include:

(1) An acceptable property appraisal.

(2) A Phase I Environmental Site Assessment (American Society of Testing and Materials).

(3) A Standard Flood Hazard Determination.

(4) In the case of the purchase of an existing structure, rehabilitation or refinancing, a physical needs assessment.

§ 3565.255 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed actions on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in site or project design. A site will not be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation.

§ 3565.256 Architectural services.

Architectural services must be provided for the project in accordance with 7 CFR part 1924, subpart A or successor regulation, including plan certifications.

§ 3565.257 Procurement actions.

All construction procurement actions, whether by sealed bid or by negotiation, must be conducted in a manner that provides maximum open and free competition.

§§ 3565.258–3565.299 [Reserved]

§ 3565.300 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart G—Processing Requirements

§ 3565.301 Loan standards.

An approved lender must originate and underwrite the loan and appraise the subject property in accordance with prudent lending practices and Agency criteria addressing the following factors:

(a) Borrower qualifications and creditworthiness;

(b) Property, vacancy, market vacancy or collection loss;
(c) Rental concessions and rent levels;
(d) Tenant demand and housing supply;
(e) Property operating and maintenance expense;
(f) Property requirements as contained in subpart F of this part;
(g) Debt coverage ratio;
(h) Operating and long-term capital requirements;
(i) Loan-to-value ratio;
(j) Return on borrower equity; and
(k) Estimated long-term marketability of the project.

§ 3565.302 Allowable fees.

(a) *Lender fees.* The lender is authorized to charge reasonable and necessary fees in connection with a borrower's application for a guaranteed loan.

(b) *Agency fees.* The Agency will charge one or more types of fees deemed appropriate as reimbursement for reasonable and necessary costs incurred in connection with applications received from lenders for monitoring or annual renewal fees. These fees will be published in NOFA. Agency fees may include, but are not limited to the following:

(1) *Site Assessment and Market Analysis or preliminary feasibility fee.* A fee for review of an application for a determination of preliminary feasibility.

(2) *Application fee.* A fee submitted in conjunction with the application for a loan guarantee.

(3) *Inspection fee.* A fee for inspection of the property in conjunction with a loan guarantee.

(4) *Transfer fee.* A fee in connection with a request for approval of a transfer of physical assets or a change in the composition of the ownership entity.

(5) *Extension or reopening fees.* A fee to extend the guarantee commitment or to reopen an application when a commitment has expired.

§ 3565.303 Issuance of loan guarantee.

(a) *Preliminary feasibility review.* During the initial processing of a loan, the lender may request a preliminary feasibility review by the Agency when required loan documentation is submitted.

(b) *Conditional commitment to guarantee a loan.* The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements. The commitment to guarantee a loan, will specify any conditions necessary to obtain a determination by the Agency that all program requirements have been met. A conditional commitment can be issued, subject to the availability of funds, *after*:

(1) Completion by the Agency of an environmental review in accordance with 7 CFR part 1940, subpart G or successor regulation, and the National Environmental Policy Act; and

(2) Selection of the proposed project for funding by the Agency in accordance with ranking and selection criteria.

(c) *Guarantee during construction.* For combination construction and permanent loans, the Agency will issue an initial guarantee to an approved construction lender.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain a payment and performance bond covering contract work or acceptable credit enhancement as discussed in § 3565.52(a).

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee on the permanent loan will be issued once the following items have been submitted to and approved by the Agency.

(1) An updated appraisal of the project as built;
(2) A certificate of substantial completion;
(3) A certificate of occupancy or similar evidence of local approval ;
(4) A final inspection conducted by a qualified Agency representative;
(5) A final cost certification in a form acceptable to the Agency;
(6) A submission to the Agency of the complete closing docket;
(7) A certification by the lender that the project has reached an acceptable minimum level occupancy;
(8) A recordable, executed regulatory agreement.
(9) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management, contained in subparts E and F of this part;
(10) Necessary information to complete an updated necessary assistance review by the Agency; and
(11) Compliance with all conditions contained in the conditional commitment for guarantee.

(e) *Modification of guarantee amount after commitment.* The Agency may modify the guarantee amount or decline to issue a loan guarantee when a lender fails to honor obligations or to fulfill representations made under the guarantee commitment.

§ 3565.304 Lender loan processing responsibilities.

(a) *Application.* The lender will be responsible for submitting an application for a loan guarantee in a format prescribed by the Agency. Lenders may submit an application at the feasibility stage or when they request a conditional commitment.

(b) *Project servicing, management and disposition.* Unless otherwise permitted by the Agency, the originating lender must perform all loan functions during the period of the guarantee. These functions include servicing, asset management, and, if necessary, property disposition. The lender must maintain and service the loan in accordance with the provisions of subpart I of this part and Agency servicing procedures.

§ 3565.305 Mortgage and closing requirements.

It is the lender's responsibility to ensure that the loan closing statement and required loan documents are in a form acceptable to the Agency and included in the closing docket. The lender is responsible for resolving any underwriting and loan closing deficiencies that are found. The Agency's review of the lender's loan closing documentation does not constitute a waiver of fraud, misrepresentation, or failure of judgment by the lender.

§ 3565.306–3565.349 [Reserved]

§ 3565.350 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart H—Project Management

§ 3565.351 Project management.

As a condition of the guarantee, the lender must certify annually to the Agency that the borrower is in compliance with the regulatory agreement and program requirements with respect to all aspects of project management.

(a) *Regulatory agreement.* A regulatory agreement between the borrower and lender which will be filed in the real estate records of the

appropriate jurisdiction must be executed at the time of loan closing and contain the following covenants:

(1) That it is binding upon the borrower and any of its successors and assigns, as well as upon the lender and any of its successors and assigns, for the duration of the guaranteed loan;

(2) That the borrower makes all payments due under the note and to the required escrow and reserve accounts;

(3) That the borrower maintains the project as affordable housing in accordance with the purposes and for the duration defined in the statute;

(4) That the borrower maintains the project in good physical and financial condition at all times;

(5) That the borrower obtains and maintains property insurance and any other insurance coverage required to protect the security;

(6) That the borrower maintains complete project books and financial records, and provides the Agency and the lender with an annual audited financial statement after the end of each fiscal year;

(7) That the borrower makes project books and records available for review by the Office of Inspector General, Rural Development staff, General Accounting Office, and the Department of Justice, or their representatives or successors upon appropriate notification;

(8) That the borrower prepares and complies with the Affirmative Fair Housing Marketing Plan and all other Fair Housing requirements;

(9) That the borrower operates as a single asset ownership entity, unless otherwise approved by the Agency;

(10) That the borrower complies with applicable federal, state and local laws; and

(11) That the borrower provides management satisfactory to the lender and to the Agency and complies with an approved management plan for the project.

(b) *Management plan.* The lender must approve the borrower's management plan and assure that the borrower is in compliance with Agency standards regarding property management, including the requirements contained in subparts E and F of this part.

(c) *Tenant protection and grievance procedures.* Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 1944, subpart L or successor regulation. The borrower must inform tenants in writing of these rights.

(d) *Financial management*—(1) *Borrower reporting requirements.* At a minimum, the lender must obtain, on an annual basis, an audited annual financial statement conducted in accordance with generally accepted government auditing standards.

(2) *Lender reporting requirements.* The lender must review the financial reports to assure that the property is in sound fiscal condition and the borrower is in compliance with financial requirements. The lender must report findings to the Agency as follows:

(i) *Annual reports.* The lender must submit to the Agency a copy of the annual financial audit of the project and must report on the nature and status of any findings. To the extent that outstanding findings or issues remain, the lender must submit to the Agency a copy of a plan of action for any unresolved findings.

(ii) *Monthly reports.* The lender must submit monthly reports to the Agency on all loans that are either in default, delinquent, or not in compliance with program requirements. This report must provide information on the financial condition of each loan, the physical condition of the property, the amount of delinquency, any other non-compliance with program requirements and the proposed actions and timetable to resolve the delinquency, default or non-compliance.

(3) *Reserve releases.* The lender is responsible for approving or disapproving all borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.

(4) *Insurance requirements.* At loan closing, the borrower will provide the lender with documentary evidence that Agency insurance requirements have been met. The borrower must maintain insurance in accordance with Agency requirements until the loan is repaid and the lender must be named as the insurance policy's beneficiary. The lender must obtain insurance on the secured property if the borrower is unable or unwilling to do so and charge the cost as an advance.

(5) *Distribution of surplus cash.* Prior to the distribution of surplus cash to the owner, the lender must certify that the property is in good financial and physical condition and in compliance with the regulatory agreement. Such compliance includes payment of outstanding obligations, debt service, and required funding of reserve and escrow accounts.

(e) *Physical maintenance.* The lender must annually inspect the property to ensure that it is in compliance with state and local codes and program requirements. The lender must certify to the Agency that a property is in such compliance, or report to the Agency on any non-compliance items and proposed actions and timetable for resolution. Failure to provide responsive corrective action can result in reduction or cancellation of the guarantee by the Agency.

§ 3565.352 Preservation of affordable housing.

(a) *Original purpose.* During the period of the guarantee, owners are prohibited from using the housing or related facilities for any purpose other than an approved program purpose.

(b) *Use restriction.* For the original term of the guaranteed loan, the housing must remain available for occupancy by low and moderate income households, in accordance with subpart E of this part. This requirement will be included in a deed restriction or other instrument acceptable to the Agency. The restriction will apply unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the Agency waives the applicability of this requirement after determining that each of the following three circumstances exist.

(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.

§ 3565.353 Affirmative fair housing marketing.

As a condition of the guarantee, the lender must ensure that the lender and borrower are in compliance with the approved Affirmative Fair Housing Marketing Plan. This plan must be reviewed annually by the lender to ensure that the borrower remains in compliance and to recommend modifications, as necessary.

§ 3565.354 Fair housing accommodations.

The lender must ensure that the borrower is in compliance with the applicable fair housing laws in the development of the property, the selection of applicants for housing, and ongoing management. See subpart A of this part.

§ 3565.355 Changes in ownership.

Any change in ownership, in whole or in part, must be approved by the lender and the

Agency before such change takes effect.

§§ 3565.356–3565.399 [Reserved]

§ 3565.400 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart I—Servicing Requirements

§ 3565.401 Servicing objectives.

The participating lender is responsible for servicing the guaranteed loan throughout the term of the loan or guarantee, whichever is less. In all cases, the lender remains responsible for liquidation of the property in accordance with the Loan Note Agreement, unless otherwise determined by the Agency. A lender-servicing plan must be designed and implemented to achieve the following objectives.

(a) To preserve the value of the loan and the real estate;

(b) To avoid a loss to the lender or the Agency and to limit exposure to potential loss;

(c) To protect the interests of the tenants; and

(d) To further program objectives.

§ 3565.402 Servicing responsibilities.

The lender must service the loan in accordance with this subpart and perform the services contained in this section in a reasonable and prudent manner. The lender is responsible for the actions of its agents and representatives.

(a) *Funds management.* The lender must have a funds management system to receive and process borrower payments, including the following.

(1) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts.

(2) Payments to custodial escrow accounts for taxes and insurance premiums, assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property.

(b) *Asset management.* The lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in subpart H of this part.

(c) *Management of delinquencies and defaults.* Each month the lender must report to the Agency any delinquencies and defaults in accordance with subpart H of this part.

§ 3565.403 Special servicing.

Special servicing must be initiated when regular servicing actions are insufficient to resolve borrower default or property deficiencies.

(a) *Responsibility of lender.* It is the lender's responsibility during special servicing to make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected, until such time that the property is liquidated by the lender, the loan is paid in full, or the loan is assigned to the Agency. The lender must update the Agency monthly until the default is cured or a claim is filed. The lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

(b) *Initiating special servicing.* When special servicing is initiated, the lender must submit for Agency review a special servicing plan that includes proposed actions to cure the deficiencies and a timeframe for completion. The special servicing plan will specify the proposed terms of any workout agreement recommended by the lender. The lender must obtain Agency approval of the terms of any workout agreement with the borrower. The workout agreement may include a loan modification, transfer of physical assets, or partial payment of claim and reamortization of the loan. Failure to comply with terms contained in the executed workout agreement will be considered a default of the guaranteed loan.

(1) *Loan modification.* The borrower and lender may agree to a loan modification when such action will improve the financial viability of the project and its operations, and when a circumstance exists that is beyond the borrower's control. The Agency must approve in advance any loan modification that extends the life of the loan or requires an increase in the amount of the guarantee. All changes must be within the requirements of section 538 of the Housing Act of 1949.

(2) *Change in ownership and transfer of physical assets.* A default or delinquency may be resolved by a change of the ownership entity in whole or in part. The Agency must approve all changes in ownership prior to the effective date of the transfer, and may require additional resources from the lender or borrower to resolve project deficiencies. A change in the ownership entity, including a transfer of physical assets, will not relieve the original borrower of liability for the loan, pursuant to the provisions regarding release of liability contained in subpart E of this part.

(3) *Partial payment of claims.* The lender may request a partial payment of claim as a result of a loss experienced by the lender as a means to work out a troubled loan. The Agency will accept such claim if it determines that it is in the best interest of the government. In applying the partial payment, the lender must assign the obligation covered by the partial payment to the Agency, and, if required by the Agency, reamortize the obligation using the amount of the remaining obligation over an agreed-upon term.

(c) *Claims processing.* In the event of a loss, the lender must submit claims under the guarantee in accordance with subpart J of this part. Prior to submitting a claim, the lender must exhaust all possibilities of collection on the loan.

(d) *Displacement prevention.* The actions of the lender must not harm the property's tenants through displacement.

§ 3565.404 Transfer of mortgage servicing.

Transfer of servicing is prohibited unless the Agency determines that circumstances warrant such action, the proposed lender is an eligible lender approved by the Agency, and the transfer of servicing is approved by the Agency in advance.

§§ 3565.405–3565.449 [Reserved]

§ 3565.450 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Subpart J-Assignment, Conveyance, and Claims

§ 3565.451 Preclaim requirements.

(a) *Lender certifications.* After borrower default and before filing a claim or assignment of the loan to the Agency, the lender must make every reasonable and prudent effort to resolve the default. The lender must provide the Agency with an accounting of all proposed and actual actions taken to cure the default. The lender must certify that all reasonable efforts to cure the default have been exhausted. Where the lender fails to comply with the terms of the loan guarantee agreement and the corresponding regulations and guidance with regard to liquidating the property, the Agency, at its option, may take possession of the security collateral and dispose of the property.

(b) *Due diligence by lender.* For all loan servicing actions where a market, net recovery or liquidation value determination is required, guaranteed lenders shall perform due diligence in

conjunction with the appraisal and submit it to the Agency for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials is considered an acceptable format for due diligence.

(c) *Environmental review.* The Agency is required to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1940, subpart G or a successor regulation, prior to disposition of inventory property, if title is held by the Agency, and prior to any authorization to the guaranteed lender to foreclose and dispose of property, and for any other servicing action requiring Agency approval or consent.

§ 3565.452 Decision to liquidate.

A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 of subpart I or it has been determined that it is in the best interest of the Agency and the lender to liquidate.

§ 3565.453 Disposition of the property.

(a) *Liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed plan of liquidation. Upon approval by the Agency of the liquidation plan, the lender will proceed to liquidate. At a minimum, this plan must contain the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Acquiring and disposing of all collateral;

(ii) Collecting from guarantors;

(iii) Obtaining an appraisal of the collateral;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(4) Necessary steps for protection of the tenants and preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(b) *Filing an estimated loss claim.* Upon Agency concurrence in the liquidation plan and when the lender owns any or all of the guaranteed portion of the loan, the Agency may, in accordance with program guidance, pay an estimated loss payment based on an Agency determined percentage of the approved estimate of the loss. The estimated loss payment will be based in the liquidation value of the collateral. If such payment is made, it will be applied to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures.

(c) *Property disposition.* Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944, subpart L or successor regulation. This liquidation process must be completed within 9 months from the lender's decision to liquidate, unless otherwise approved by the Agency.

(d) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

§ 3565.454 [Reserved].

§ 3565.455 Alternative disposition methods.

The Agency, in its sole discretion, may choose to obtain an assignment of the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

§ 3565.456 Filing a claim.

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

§ 3565.457 Determination of claim amount.

(a) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(b) *Date of loss.* The date of loss is the earliest of the date on which the property is foreclosed or acquired or the proposed date of foreclosure or acquisition in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(c) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for

payments made by the lender for amounts due and owing on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance on the property;

(iv) Loan guarantee fees paid after default; and

(v) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(d) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

§ 3565.458 Withdrawal of claim.

If the lender provides timely written notice to the Agency of withdrawal of the claim, the guarantee will continue as if the default had not occurred if the borrower cures the default prior to foreclosure or prior to acceptance of a deed-in-lieu of foreclosure.

§§ 3565.459–3565.499 [Reserved]

§ 3565.500 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is 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 0575–0174.

Dated: July 16, 1998.

Inga Smulkstys

Acting Under Secretary Rural Development.

[FR Doc. 98–19558 Filed 7–21–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe to submit proposals in the form of "NOFA responses" for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders are invited to submit NOFA proposals for the development of affordable rental housing to serve rural America. Lenders have the option, but it is not a requirement, of submitting their application concurrently with their NOFA response. This document also describes the overall application process, including the selection of NOFA responses and the allocation of interest credits.

DATES: The deadline for receipt of NOFA responses is 4:00 PM, Eastern Daylight Savings Time on August 17, 1998. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash on Delivery (COD), and postage due NOFA response/application will not be accepted. No NOFA responses will be accepted after the deadlines previously mentioned, unless that date and time is extended by another Notice published in the **Federal Register**.

ADDRESSES: Responses for participation in the program must be identified as "Section 538 Guaranteed Rural Rental Housing Program" on the envelope or wrapper and be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, US Department of Agriculture, Room 5337 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Obediah G. Baker, Jr., Director, Multi-Family Housing Processing Division, U. S. Department of Agriculture, South Agriculture Building, Room 5337 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781. Telephone: (202) 720–1604 (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, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is intended to provide rural America with affordable housing through the use of loan guarantees and partnering with other housing programs, including state and local housing finance agencies and bond issuers.

The Rural Housing Service (RHS) is publishing regulations governing the program as an interim rule elsewhere in this **Federal Register**. Those regulations set forth RHS policies and requirements on the program, including: lender and borrower requirements, loan and property requirements and restrictions, purposes and uses of guaranteed funds, processing requirements, project management and servicing requirements, and policies and mandated procedures on assignments, conveyances and claims. Interested applicants should carefully review the interim rule, RHS's handbook of administrative procedures on origination and servicing for the program, and the application package. These are available from the RHS Multi-Family Housing Processing Division at 202–720–1604. 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.

Discussion of Notice

I. Purpose and Program Summary

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 or acquisition with rehabilitation of at least $15,000 per unit. RHS may 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. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata split between the lender and the Agency from the first dollar lost.

II. Allocation

In Fiscal Year (FY) 1998, budget authority will provide approximately $38 million in program dollars. All FY 1998 funds will be held in the National Office. There are no set-asides or demonstration purposes for the GRRHP for FY 1998.

III. Application Process

For FY 1998, there is limited time between the publication of the NOFA and the deadline for receipt of applications in time for making conditional commitments for guaranteed loans. Eligible lenders are encouraged to submit NOFA responses prior to deadline, as applications will be reviewed as they are received. Lenders are required to submit their NOFA response by August 17, 1998. In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission with both the NOFA response and application. Upon notice of selection, lenders with the top ranked NOFA responses will be requested to submit the required application fee of $2,500.00 and full application if not already submitted. When the conditions of the conditional commitment are met, the lender will submit the required information with a separate guarantee fee of 1% of the total commitment amount.

IV. Submission Requirements

All NOFA responses for the GRRHP must meet the requirements of 7 CFR part 3565 and this NOFA. Incomplete submissions will not be reviewed and will be returned to the lender. Lenders are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. RHS will base its determination of completeness of the application and the eligibility of each lender on the information provided in the application.

V. Selection Criteria

A. NOFA proposals will be reviewed as received. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria designed to focus the FY 1998 guarantee program on Presidentially-declared disaster areas, to promote partnerships creating affordable housing, and to assure the most cost effective financing packages:

(1) Proposal in a rural Presidentially-declared disaster area (25 points).

(2) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging is encouraged (up to 20 points with 5 points for each source of funding contributing 10 percent or more of total development cost).

(3) Loans with interest rates of less than 200 basis points over the 30 Year Treasury Rate; the lower the basis points, the higher the priority. Interest rate priority points will be awarded as follows:

Interest rate	Points
175 to 151 basis points	5
150 to 100 basis points	10
99 to 50 basis points	15
49 to 0 basis points	20

In the event of ties, proposals in rural Presidentially-declared disaster areas will be selected. In the event of ties between two or more proposals in such areas, selection between such proposals will be by lot. If there are ties between two or more NOFA responses not in rural Presidentially-declared disaster areas, selection will be by lot.

B. For 20 percent of the loans made under the program, RHS shall provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 200 basis points. In no instance will the lender's interest rate be reduced to lower than the Applicable Federal Rate.

RHS will provide interest credit on up to $1.5 million of a loan submitted for guarantee. Lenders with proposals that could be viable with or without interest credits are encouraged to submit a NOFA response reflecting financial and market feasibility under both funding options.

NOFA responses proposing to receive interest credit will be selected using the following criteria:

(1) Requests will be ranked using the selection criteria for non-interest credit proposals (up to 65 points).

(2) Geographical location with emphasis on smaller rural communities versus larger rural communities. The requests will be ranked by population with proposals serving the smallest communities receiving priority. All proposals will be ranked in descending order of their population. The proposals will be given a point score starting with the lowest population receiving 20 points, the next 19 points and so forth until all 20 points are awarded. Those remaining will receive zero points.

(3) The most needy communities within a State based on census income data showing the preponderance of low and moderate income families. The communities to benefit from a guarantee with interest credit will be ranked by their percentage of the median income within the State with proposals serving rural communities with the lowest relative median income in the State compared to proposals serving communities in other States receiving priority. The proposals will be given a point score starting with the lowest percentage of median income receiving 20 points, the next 19 points and so forth until all 20 points are awarded. Those remaining will receive zero points.

(4) Extent of the commitment by the applicant to maintain priority at initial occupancy for low income families throughout the term of the loan. All proposals will be ranked by length of commitment with the longest receiving priority. The proposals will be given a point score starting with the longest occupancy commitment for low-income families receiving 20 points, the next 19 points and so forth until all 20 points are awarded. Those remaining will receive zero points.

(5) The lowest overall proportional effective subsidy cost to RHS. All of the interest credit requests will be ranked by proportional effective subsidy cost to the government with the lowest cost to RHS receiving priority. The proposals will be given a point score starting with the lowest proportional effective subsidy cost to RHS receiving 20 points, the next 19 points and so forth until all 20 points are awarded. Those remaining will receive zero points.

(6) Preference will be given to family proposals with large bedroom mixes. All of the proposals will be ranked by percent of units with 3–5 bedrooms with the proposals having the highest percent of 3–5 bedrooms receiving priority. The proposals will be given a point score starting with the highest ratio of 3–5 bedroom units to total units receiving 20 points, the next 19 points and so forth until all 20 points are awarded. Those remaining will receive zero points.

(7) Proposals to be developed in a colonial on tribal land, or in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

In the event of ties, proposals in rural Presidentially-declared disaster areas will be selected to receive interest credit assistance. In the event of ties between two or more proposals in such areas, selection between such proposals will be by lot. If there are ties between two or more NOFA responses not in rural Presidentially-declared disaster areas, selection will be by lot.

VI. Additional Information

A. Regulations

NOFA responses are also subject to the regulatory provisions of the Interim Final Rule entitled "Guaranteed Rural Rental Housing Program," which is published elsewhere in this issue of the **Federal Register**.

B. Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 1998.

C. Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 200 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.

D. Lender Application Fee

There is no lender fee for lender approval in FY 1998.

E. Program Fees for FY 1998

(1) There is a guarantee fee of 1% of the total commitment amount which will be due at closing of the permanent loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. Each calendar year, this fee will be collected in advance, beginning on the first anniversary of the loan.

(3) There is no site assessment and market analysis or preliminary feasibility fee in FY 1998.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(6) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(7) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

Dated: July 17, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–19559 Filed 7–21–98; 8:45 am]

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Federal Register

Vol. 63, No. 140

Wednesday, July 22, 1998

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Federal Register/Code of Federal Regulations	
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FEDERAL REGISTER PAGES AND DATES, JULY

35787–36150 1
36151–36338 2
36339–36540 6
36541–36830 7
36831–37058 8
37059–37242 9
37243–37474 10
37475–37754 13
37755–38072 14
38073–38276 15
38277–38460 16
38461–38736 17
38737–39014 20
39015–39208 21
39209–39474 22

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7107 36531
7108 38073
Executive Orders:
9981 (See Proclamation 7108) 38073
11958 (Amended by EO 13091) 36153
12163 (Amended by EO 13091) 36153
13090 36151
13091 36153
Administrative Orders:
Presidential Orders:
No. 98–31 36149
Memorandums:
July 8, 1998 38277

5 CFR

Proposed Rules:
2420 35882
2421 35882
2422 35882
2423 35882
2470 35882
2472 35882

7 CFR

2 35787
272 37755
275 37755
300 39209
301 ..... 36155, 38279
319 39209
457 ..... 36156, 36157
911 37475
915 37475
931 38280
948 38282
1361 37755
1371 37755
1773 38719
1940 39452
1980 36157
3565 39452
Proposed Rules:
246 38343
457 38761
905 38347
924 38349
927 39037
958 36194
1005 39039
1007 39039
1046 39039
1753 38503
1755 36377

8 CFR

3 36992
211 39217
240 39121
274a 39121

9 CFR

3 37480
78 37243
93 37483

10 CFR

34 37059
140 39015
430 38737
Proposed Rules:
20 38511

11 CFR

Proposed Rules:
102 37721
103 37721
106 37721

12 CFR

208 37630
209 37659
216 37665
250 37630
360 37760
560 38461
611 ..... 36541, 39219
614 36541
615 39219
620 ..... 36541, 39219
627 39219
630 36541
904 37483
Proposed Rules:
330 38521

13 CFR

121 38742

14 CFR

25 38075
39 ..... 35787, 35790, 35792, 35793, 35794, 35796, 36158, 36549, 36551, 36553, 36831, 36832, 36834, 36835, 36836, 37061, 37063, 37761, 37763, 37765, 38284, 38286, 38287, 38289, 38290, 38293, 38295, 38463, 38464, 38742, 39016, 39018, 39229, 39231, 39232
71 ..... 36161, 36554, 36838, 36839, 36840, 36841, 36843, 36844, 36845, 37065, 37489, 37943, 38077, 38079, 38080, 38466, 39233, 39234
95 37243
97 ..... 36162, 36165, 36170, 38467, 38468, 38470
Proposed Rules:
27 37745

29 37745
39 ..... 35884, 36377, 36619, 36621, 36622, 36624, 36626, 36628, 36630, 36864, 37072, 37074, 37078, 37080, 37083, 37508, 37793, 37795, 38116, 38118, 38120, 38122, 38123, 38126, 38351, 38353, 38524, 39045, 39050, 39053, 39244, 39252, 39254
65 ..... 37171, 37210
66 ..... 37171, 37210
71 ..... 37510, 38524
91 38235
93 38231
147 37171
234 38128
241 38128
250 38128
298 38128
374a 38128

15 CFR

280 37170
740 37767
746 37767
774 37767
902 ..... 37246, 38298
922 36339

16 CFR

0 36339
1 36339
3 36339
4 38472
303 36171
304 36555
305 38743
432 37233
Proposed Rules:
432 37237

17 CFR

240 ..... 37667, 37688
275 39022
Proposed Rules:
1 38525
5 38537
17 38525
18 38525
150 38525
201 39054
210 35886
229 35886
230 36136
240 ..... 35886, 36138, 37746
249 35886
275 36632
279 36632

18 CFR

37 38883

19 CFR

162 ..... 35798, 36992
178 ..... 35798, 36992
Proposed Rules:
4 036379

20 CFR

404 36560
416 36560

21 CFR

101 37029
172 ..... 36344, 36362
173 38746
175 37246
177 36175
178 ..... 35798, 36176, 36177, 38747
510 36178
520 ..... 36178, 38473, 38474
522 ..... 38303, 38749
529 38304
556 ..... 38303, 38749
558 ..... 36179, 38474, 38750, 39028
Proposed Rules:
120 37057
341 38762
812 38131

22 CFR

40 36365
41 36365
140 36571
228 38751

25 CFR

Proposed Rules:
61 36866

26 CFR

1 36180
48 35799
145 35799
602 35799
648 36180
Proposed Rules:
1 ..... 37296, 38139
48 35893
301 37296

27 CFR

178 37739

28 CFR

0 36846
2 39172
16 36295
Proposed Rules:
23 38765

29 CFR

1910 39029
1915 39029
1926 39029
4011 38305
4022 38305
4041A 38305
4044 ..... 38082, 38305
4050 38305
4281 38305

30 CFR

250 37066
901 35805
918 38881
948 37774
Proposed Rules:
72 37796
75 ..... 37796, 38065
206 ..... 36868, 38355
944 36868

31 CFR

103 37777
317 38035
321 38035
330 38035
357 35807
359 38035
360 38035
501 35808
515 35808
538 35809
560 35808
Proposed Rules:
103 37085

32 CFR

204 36992
588 37068
Proposed Rules:
199 36651
655 37296

33 CFR

Ch. I 36384
100 ..... 36181, 36182, 36183, 36849, 36850, 37249, 37490, 37491, 38308, 38752, 39235
117 ..... 35820, 37250, 37251, 39029
155 35822
165 ..... 36851, 37492, 38307, 38476, 38753, 39236, 39237
401 36992
402 36992
Proposed Rules:
100 36197
110 37297
165 39256

34 CFR

74 36144
80 36144
685 39009
Proposed Rules:
304 37465
668 37713

36 CFR

327 35826
1220 35828
1222 35828
1228 35828
1230 35828
1234 35828
1238 35828

37 CFR

1 36184

38 CFR

4 37778
17 37779
21 35830
Proposed Rules:
17 37299

39 CFR

20 ..... 37251, 38478
111 ..... 37254, 37945, 38083, 38309, 39238
3001 39030

40 CFR

52 ..... 35837, 35839, 35842, 36578, 36578, 36852, 36854, 37255, 37493, 38087, 38755
62 36858
63 38478
81 ..... 37258, 39432
136 38756
180 ..... 35844, 36366, 37280, 37286, 37289, 38481, 38483, 38495, 39032
261 37780
271 36587
279 37780
282 38498
300 ..... 36861, 37069, 37782
455 39440
Proposed Rules:
52 ..... 35895, 35896, 36652, 36870, 37307, 38139, 39258
62 36871
63 38544
81 39258
86 38767
131 36742
136 36810
141 37797
142 37797
180 37307
261 ..... 37797, 38139
264 37309
265 37309
271 36652
281 37311
300 37085
455 39444
745 39262

41 CFR

101–20 35846

42 CFR

121 35847
409 37498
410 37498
411 37498
413 37498
422 36488
424 37498
483 37498
489 37498
1008 38311

44 CFR

64 37783
65 ..... 37784, 38326
67 37786
Proposed Rules:
67 37808

45 CFR

303 36185
2510 39034
2516 39034
2517 39034
2519 39034
2521 39034
2540 39034
Proposed Rules:
286 39366
287 39366

46 CFR

401 37943
402 37943
Proposed Rules:
28 38141
502 35896
503 ..... 35896, 39263
510 35896
514 ..... 35896, 37088
540 35896

572.....35896
585.....35896
587.....35896
588.....35896

47 CFR

0.....37499
1.....35847, 36591, 38881
2.....36591
5.....36591
11.....39034
15.....36591
18.....36591
21.....36591
22.....36591
24.....36591
26.....36591
63.....37499
64.....36191, 37069
73.....36191, 36192, 36591, 38357, 38756, 38757
74.....36591, 38357
76.....37790, 38089
78.....36591
80.....36591
87.....36591
90.....36591
95.....36591
97.....36591
101.....36591

Proposed Rules:

1.....38142
2.....35901
69.....38774
73.....36199, 36387, 37090, 38784, 38785, 38786, 38787
76.....37812, 37815

48 CFR

Ch. 1.....36128
1.....36120
12.....36120
15.....36120
19.....36120
52.....36120
53.....36120
235.....36862
401.....39239
402.....39239
403.....39239
407.....39239
408.....39239
409.....39239
411.....39239
416.....39239
419.....39239
422.....39239
424.....39239
425.....39239
432.....39239
434.....39239
436.....39239
452.....39239
532.....38330
552.....38330

Proposed Rules:

13.....36522
16.....36522,
32.....36522
52.....36522
1609.....38360
1632.....38360
1652.....38360

49 CFR

7.....38331
171.....37453
172.....37453
173.....37453
175.....37453
177.....37453
178.....37453
180.....37453
190.....38757, 38758
191.....37500, 38757
192.....37500, 38757, 38758
193.....37500, 38757
194.....37500
195.....36373, 37500, 38757
199.....36862, 38757
223.....36376
541.....38096

Proposed Rules:

171.....38455
177.....38455
178.....38455
180.....38455
385.....38788
395.....38791
396.....38791
571.....37820, 38795, 38797, 38799, 38802

50 CFR

285.....36611, 37506, 38340
600.....36612
622.....37070, 37246, 38298
660.....36612, 36614, 38101
679.....36193, 36863, 37071, 37507, 38340, 38341, 38342, 38501, 38758, 388759, 38760, 39035, 39240, 39241, 39242

Proposed Rules:

14.....38143
17.....36993, 38803
20.....38699
216.....39055
660.....38144, 39064
679.....39065

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 22, 1998

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Tomatoes from France, Morocco and Western Sahara, Chile, and Spain; published 7-22-98

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Popcorn; published 6-22-98

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Housing Opportunity Program Extension Act of 1996; implementation—
Guaranteed rural rental housing program; published 7-22-98

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Housing Opportunity Program Extension Act of 1996; implementation—
Guaranteed rural rental housing program; published 7-22-98

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Housing Opportunity Program Extension Act of 1996; implementation—
Guaranteed rural rental housing program; published 7-22-98

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Housing Opportunity Program Extension Act of 1996; implementation—
Guaranteed rural rental housing program; published 7-22-98

COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Trading hours; approval of changes; published 6-22-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Ozone areas attaining 1-hour standard; identification of areas where standard will cease to apply; published 7-22-98
Air quality implementation plans; approval and promulgation; various States:
California; published 6-22-98

FEDERAL COMMUNICATIONS COMMISSION
Radio broadcasting:
Radio technical rules; streamlining; published 6-22-98

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Inadmissibility waivers for applicants seeking admission for permanent residence; documentary requirements; published 7-22-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 7-7-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Fruits and vegetables, processed:
Inspection and certification; comments due by 7-30-98; published 6-30-98
Papayas grown in—
Hawaii; comments due by 7-29-98; published 6-29-98

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Rhododendron established in growing media; importation; comments due by 7-30-98; published 6-1-98

AGRICULTURE DEPARTMENT
Farm Service Agency
Warehouses:
Cotton warehouses; "without unnecessary delay" defined; comments due by 7-27-98; published 5-26-98

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Grain inspection equipment performance requirements:
Corn, oil, protein and starch; near-infrared spectroscopy (NIRS) analyzers; comments due by 7-30-98; published 6-30-98

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Acoustical performance of school classrooms and other buildings and facilities; rulemaking petition and request for information; comments due by 7-31-98; published 6-1-98
Play areas; comments due by 7-29-98; published 4-30-98

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
High Seas Fishing Compliance Act; vessel identification and reporting requirements; comments due by 7-27-98; published 6-25-98

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Patent Cooperation Treaty application procedures; comments due by 7-31-98; published 6-1-98

EDUCATION DEPARTMENT
Special education and rehabilitative services:
Individuals with Disabilities Education Act Amendments of 1997; implementation—
Infants and toddlers with disabilities early intervention program; advice and recommendations request; comments due by 7-31-98; published 4-14-98

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Electric motors; test procedures, labeling, and certification requirements; comments due by 7-27-98; published 6-25-98

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Oregon; comments due by 7-27-98; published 6-26-98
Air quality implementation plans; approval and promulgation; various States:
Illinois; comments due by 7-31-98; published 7-1-98
Indiana; comments due by 7-29-98; published 6-29-98
Iowa; comments due by 7-27-98; published 6-25-98
Pennsylvania; comments due by 7-29-98; published 6-29-98
Texas; comments due by 7-31-98; published 7-1-98
Water programs:
Pollutants analysis test procedures; guidelines—
Mercury; measurement method; comments due by 7-27-98; published 5-26-98

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Mutual Recognition Agreements implementation and Global Mobile Personal Communication for satellite terminals; equipment authorization process streamlining; comments due by 7-27-98; published 6-10-98
Conducted emission limits; inquiry; comments due by 7-27-98; published 6-25-98
Frequency allocations and radio treaty matters:
Radio frequency devices capable of causing harmful interference;

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 960/P.L. 105–195

To validate certain conveyances in the City of Tulare, Tulare County, California, and for other purposes. (July 16, 1998; 112 Stat. 629)

H.R. 2202/P.L. 105–196

National Bone Marrow Registry Reauthorization Act of 1998 (July 16, 1998; 112 Stat. 631)

H.R. 2864/P.L. 105–197
Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 (July 16, 1998; 112 Stat. 638)

H.R. 2877/P.L. 105–198
To amend the Occupational Safety and Health Act of 1970. (July 16, 1998; 112 Stat. 640)

H.R. 3035/P.L. 105–199
National Drought Policy Act of 1998 (July 16, 1998; 112 Stat. 641)

H.R. 3130/P.L. 105–200
Child Support Performance and Incentive Act of 1998 (July 16, 1998; 112 Stat. 645)

H.J. Res. 113/P.L. 105–201
Approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital. (July 16, 1998; 112 Stat. 675)

S. 731/P.L. 105–202
To extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes. (July 16, 1998; 112 Stat. 676)

Last List July 16, 1998

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