6–22–98
Vol. 63 No. 119

Federal Register

Monday
June 22, 1998

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(ISSN 0097–6326)

6–22–98
Vol. 63 No. 119
Pages 33833–34118

federal register

Monday
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Presidential Documents

Title 3—

The President

Proclamation 7106 of June 17, 1998

Father's Day, 1998

By the President of the United States of America

A Proclamation

Fathers hold us close and lift us up in so many ways throughout our lives. Devoted fathers work day in and day out, not only to help provide their families with food, clothing, education, and a good home, but also to give their children the values, guidance, encouragement, and self-esteem to make the most of their lives. With careful planning and many quiet sacrifices, fathers seek to give their children the freedom to dream and the opportunity to make those dreams a reality. Across our Nation, at piano recitals and basketball games, at science fairs and high school graduations, proud fathers rejoice at the achievements of their sons and daughters.

In today's complex and changing society, fathers have taken on new roles and additional responsibilities within their homes, balancing the varied demands of work and family. They are nurturers as well as providers, confidants and best friends as well as heroes and role models. They teach their children how to read, how to drive, and how to live. And, like generations of fathers who came before them, they build a strong foundation of love that enables their sons and daughters to stand taller, see farther, and reach higher. On Father's Day, let us thank the biological fathers, stepfathers, foster fathers, and adoptive fathers across America whose love graces their children's lives and whose character strengthens our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 21, 1998, as Father's Day. I invite the States, communities across the country, and all the citizens of the United States to observe this day with appropriate ceremonies and activities that demonstrate our deep appreciation and abiding love for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of June, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–16696
Filed 6–19–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 447 and 457

RIN 0563–AB48

Popcorn Crop Insurance Regulations; and Common Crop Insurance Regulations, Popcorn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of popcorn. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current popcorn crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current popcorn crop insurance regulations to the 1998 and prior crop years.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through October 31, 2000.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. 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.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information now required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the insured or the insurance companies. Additionally, this regulation does not require any greater action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

On Wednesday, April 9, 1997, FCIC published a notice of proposed rulemaking in the **Federal Register** at 62 FR 17103 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.126, Popcorn Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring popcorn found at 7 CFR part 447 (Popcorn Crop Insurance Regulations). FCIC also amends 7 CFR part 447 to limit its effect to the 1998 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to

submit written comments and opinions. A total of 31 comments were received from an insurance service organization and reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization and two reinsured companies asked whether, under the definition of "good farming practices," there may exist acceptable cultural practices that are not necessarily recognized (or possibly not known) by the Cooperative State Research, Education, and Extension Service. The commenters recommended changing the term "county" in the definition of "good farming practices" to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *"

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing popcorn. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term "generally" will only make the definition ambiguous and more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. However, the definition of "good farming practices" has been moved to the Basic Provisions.

Comment: A reinsured company expressed concern about the definition of "final planting date" because it infers that coverage is provided after the final planting date; however, there are no provisions for "late planting."

Response: The definition of "late planting" as well as provisions for late and prevented planting coverages common to most crops have been moved to the Basic Provisions. FCIC has added late planting provisions, section 14, and prevented planting provisions, section 15, to these popcorn crop provisions.

Comment: A reinsured company recommended adding the words "and quality" after the word "quantity" in the definition of "irrigated practice."

Response: There are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured person failed to exercise due care and diligence. The definition of "irrigated practice" has been moved to the Basic Provisions.

Comment: An insurance service organization and a reinsured company stated the definition of "replanting" is confusing and awkward. One of the commenters recommended revising the definition to specify "* * * growing a successful popcorn crop."

Response: The definition of "replanting" clearly describes the steps required to replant the crop. The producer must first perform the cultural practices needed to replant the seed before replanting the seed. FCIC has revised the definition to specify that the crop be replanted with the expectation of producing at least the guarantee. The definition of "replanting" has been moved to the Basic Provisions.

Comment: A reinsured company recommended that the reference contained in the definition of "written agreement" should be section 14 rather than section 15.

Response: The provisions for written agreements have been moved to the Basic Provisions with reference to the correct section.

Comment: An insurance service organization and a reinsured company recommended amending section 2 of the proposed rule to clarify whether optional units may be established if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC has amended section 2 to specify that processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for such production-based processor contracts. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage-based and production-based processor contracts. In addition, language in this section that is common with other Crop Provisions has been moved to the Basic Provisions.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(b)(5)(iv)(B) that states "In addition to, or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * * "since section 2(b)(5)(iv) specifies that "Each optional unit must meet one or more of the following criteria* * *."

Response: FCIC has revised the language accordingly. However, the optional unit provisions common to most crops have been moved to the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a) which provides guidelines for selection of price elections should be moved to the Basic Provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum prices does not apply to all crop policies. However, this clause applies to a sufficient number of policies so as to make it an item for consideration whenever 7 CFR part 457 is amended. This recommendation will be considered at that time, and no change has been made to these popcorn provisions.

Comment: An insurance service organization expressed concern that the November 30 contract change date is not early enough for counties with a January 15 sales closing date.

Response: The January 15 cancellation and termination dates are applicable only to counties in the most southern part of Texas. The commenter did not provide specific details as to why the November 30 contract change date is not sufficient. FCIC believes that the 45 days between the contract change date and the cancellation date allows an ample period of time for the insured to make a decision regarding subsequent crop year coverages considering the small number of policies and areas involved. Therefore, no change has been made.

Comment: An insurance service organization stated that section 6 which requires the producer to provide a copy of the processor contract no later than the acreage reporting date, could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Popcorn producers will have processor contracts much sooner to ensure that they have a market before expending the costs to plant the crop. The requirement to provide a copy of the processor contract with the acreage report is also most convenient for the producer. Language in section 6 has been revised to clarify that a copy of all processor contracts must be provided on or before the acreage reporting date.

Comment: An insurance service organization recommended changing the word "before" in section 7(a)(3) to "by" or "on or before" the acreage reporting date. This would allow for the processor contract to be established that day.

Response: FCIC has amended the provision accordingly.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted popcorn or popcorn planted into an established grass or legume. The commenter further indicted that consideration should be given to inserting the language in section 7(a)(4) into the Basic Provisions.

Response: Popcorn has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(4) to accommodate such developments if they should occur. In addition, interplanting provisions are not the same among the crop policies and, therefore, will be retained in the Crop Provisions.

Comment: An insurance service organization indicated that the provisions contained in section 7(b) are confusing and seem to indicate that only a landlord would have a share in the insured crop and that a tenant cannot have a share since that person does not retain possession of the acreage. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a) (1) and (3).

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or owns acreage. The word "possession" has been changed to "control" for clarification and FCIC has added that the insured must have a risk of loss. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: Two comments from an insurance service organization and one from a reinsured company questioned whether the provisions in section 9(b), which state that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provisions in section 13(a), that states "We will determine your loss on a unit basis." The commenters questioned how the insured will know enough production has been harvested before acceptance by the processor. One commenter stated that the insured may not be aware of discounts and production modifications (*e.g.*, shrinkage, foreign material, etc.) that may be imposed by the processor. The insured may believe the contracted amount of production has been harvested and later learn that the amount harvested is short of the production guarantee. The insurance service organization asked if any production in excess of the contracted amount will be considered as production to count for APH purposes, or is the production only counted when there is a processor settlement sheet? The insurance service organization recommended the language in section 9(b) be made similar to the language contained in the sugar beet policy, such as, "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the popcorn processor contract." The insurance service organization also questioned whether "delivered to" is the same as "accepted by" the processor and suggested adding wording to include "whether delivered or not."

Response: Section 9(b) does not conflict with section 13(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contracted amount, and the producer can only establish one basic unit per processor contract. Therefore, once the contracted amount is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there still is unharvested production, any insurable cause of loss is covered up to the contracted amount, assuming it has not been abandoned. With respect to the issue of when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. As a result, both the producer and processor are aware of the amount of production that has been delivered. All production from the unit, including any in excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. The claim settlement provisions have been clarified to state that, for the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised or harvested production lost due to uninsured causes that rendered the production unacceptable to the processor, will be included as production to count. FCIC has also revised section 9(b) to clarify that the insurance period ceases when the production accepted by the processor equals the contracted amount of production if the processor contract stipulates a specific amount of production to be delivered. However, rejected production will be considered as production to count unless it was damaged by an insurable cause of loss occurring during the insurance period.

Comment: An insurance service organization questioned a discrepancy between section 9(b), which states that insurance ceases on "The date you harvested sufficient production to fulfill your processor contract," and section 10(b)(3) of the proposed rule, which states that loss of production will not be insured due to "damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC has deleted the provision contained in section 10(b)(3) accordingly.

Comment: An insurance service organization stated that some crop policies allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when landlord and tenant are insured by the same company. However, the commenter questioned why this language is not contained in section 11 of the proposed Popcorn Crop Provisions.

Response: It is true that a few crop provisions allow the entire replanting payment to be paid to the person incurring the entire expense (usually the tenant) when the landlord and tenant are insured with the same company. However, due to comments received on other regulations, FCIC reevaluated this provision and has concluded it is not equitable to all insureds. Specifically, if a landlord and tenant are insured with one company, the provisions apply, but if the landlord and tenant are insured with different companies, the provisions do not apply. Any Crop Provisions containing these terms will be amended to eliminate them. Therefore, no change has been made.

Comment: An insurance service organization suggested that language contained in section 11(b) should include 20 acres as a minimum qualifier in addition to the others.

Response: The commenter misunderstood the provisions contained in section 11(b). Section 13 of the Basic Provisions contains the 20 acre or 20 percent rule referenced by the commenter which is applicable to this policy. Section 11(b) of the Popcorn Crop Provisions establishes the

maximum amount of the replanting payment (20 percent of the production guarantee or 150 pounds, multiplied by the price election, multiplied by the share). Therefore, no change has been made.

Comment: An insurance service organization stated the indemnity calculation contained in section 13(b) was wordy, difficult to follow, and should be simplified for crops without separate prices by type.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the section reference would make the provisions less clear. However, an example has been added to clarify section 13.

Comment: An insurance service organization stated that section 13(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short "shelf life."

Response: This provision allows deferment of a claim only if the insurance provider agrees that representative samples should be left or if the insured elects to continue to care for the entire crop in order to obtain a more accurate determination of the production to count for the unit. In either case, if the insured does not provide sufficient care for the crop or crop samples, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended removal of the requirement contained in section 15 that a written agreement be renewed each year if there are no significant changes to the farming operation. Two of the commenters stated a written agreement should be continuous and the effective period should be specified in the written agreement.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to ensure that the insured is well aware of the specific terms of the policy. The written agreement provisions have been moved to the Basic Provisions since they apply to most crops.

Comment: An insurance service organization and two reinsured companies stated the proposed rule did not contain provisions for late planting and prevented planting coverages. The commenters questioned whether popcorn was intended to have late and prevented planting coverages?

Response: Provisions for late and prevented planting coverages are now contained in the Basic Provisions which are applicable to popcorn. FCIC has added to the Popcorn Crop Provisions, a new section 14, which specifies that late planting provisions are applicable to popcorn if written approval is obtained from the processor by the acreage reporting date. FCIC has also added a new section 15, providing the available prevented planting coverage.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Popcorn Crop Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definition of "planted acreage" to add a requirement that popcorn must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise excepted. Amended the definition of "practical to replant" to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage. Clarified the definition of "processor contract" to specify that multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the specified contract, will be considered as a single processor contract. Removed the definitions of "approved yield," "days," "FSA," "interplanted," "production guarantee (per acre)," and "timely planted" because these definitions now appear in the Basic Provisions.

3. Section 2—Moved all the provisions common to most crops to the Basic Provisions.

4. Section 7(a)—Revised "actuarial table" to "actuarial documents" to be consistent with language in other crop provisions.

5. Section 7(c)(2)—Amended and clarified that the Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract.

6. Section 14—Revised provisions to address only late planted acreage.

7. Section 15—Deleted provisions for written agreements and added provisions for prevented planting coverage.

List of Subjects in 7 CFR Parts 447 and 457

Crop insurance, Popcorn.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the Popcorn Crop Insurance Regulations (7 CFR part 447) and the Common Crop Insurance Regulations (7 CFR part 457) as follows:

PART 447—POPCORN CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH THE 1998 CROP YEARS

1. The authority citation for 7 CFR part 447 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

Part Heading [Revised]

2. The part heading is revised as set forth above.

Subpart Heading [Removed]

3. The part heading "Subpart—Regulations for the 1987 and Succeeding Crop Years is removed.

4. Section 447.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 447.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Popcorn Insurance Policy for the 1987 through 1998 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CROP YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.126 is added to read as follows:

§ 457.126 Popcorn Crop Insurance Provisions.

The Popcorn Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Popcorn Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Base contract price. The price stipulated on the contract executed between you and the processor before any adjustments for quality.

Harvest. Removing the grain or ear from the stalk either by hand or by machine.

Merchantable popcorn. Popcorn that meets the provisions of the processor contract.

Planted acreage. In addition to the definition contained in the Basic Provisions, popcorn must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Pound. Sixteen (16) ounces avoirdupois.

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the popcorn processor contract, or the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in processing popcorn that possesses all licenses, permits or approved inspections for processing popcorn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted popcorn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow popcorn, and to deliver the popcorn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract;

(c) A date, if specified on the processor's contract, by which the crop must be harvested to be accepted; and

(d) A base contract price.

Multiple contracts with the same processor, each of which stipulates a specific amount of production to be delivered under the terms of the processor contact, will be considered as a single processor contract.

2. Unit Division

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 13 of these Crop Provisions, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates only the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the popcorn in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each popcorn type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties Texas, and all Texas counties lying south thereof.	January 15.
All other Texas counties and all other states.	March 15.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the popcorn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as popcorn;

(3) That is grown under, and in accordance with the requirements of, a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

(4) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the popcorn is grown, you have a risk of loss, and the processor contract provides for delivery of popcorn under specified conditions and at a stipulated base contract price.

(c) A popcorn producer who is also a processor may be able to establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) The Board of Directors or officers of the processor must, prior to the sales closing date, execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases on each unit or part of a unit at the earliest of:

(a) The date the popcorn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) When the processor contract stipulates a specific amount of production to be delivered, the date the production accepted by the processor equals the contracted amount of production;

(c) Final adjustment of a loss; or

(d) December 10 immediately following planting.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we do not insure against any loss of production due to:

(1) Damage resulting from frost or freeze after the date designated in the Special Provisions; or

(2) Failure to follow the requirements contained in the processor contract.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 150 pounds, multiplied by your price election, multiplied by your insured share.

(c) When popcorn is replanted using a practice that is uninsurable as an original planting, our liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying the result of section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results of section 13(b)(2) if there is more than one type;

(4) Multiplying the total production to count (see section 13(c)), of each type if applicable, by its respective price election;

(5) Totaling the results of section 13(b)(4) if there is more than one type;

(6) Subtracting the result of section 13(b)(4) from the result in section 13(b)(2) if there is only one type or subtracting the result of section 13(b)(5) from the result of section 13(b)(3) if there is more than one type; and

(7) Multiplying the result of section 13(b)(6) by your share.

For example:
You have a 100 percent share in 100 acres of Type A popcorn in the unit, with a guarantee of 2,500 pounds per acre and a price election of $.12 per pound. You are only able to harvest 150,000 pounds. Your indemnity would be calculated as follows:
1 ..... 100 acres × 2,500 pounds = 250,000 pound guarantee;
2 ..... 250,00 pounds × $.12 price election = $30,000 value of guarantee;
4 ..... 150,000 pounds production to count × $.12 price election = $18,000 value of production to count;
6 ..... $30,000 − $18,000 = $12,000 loss; and
7 ..... $12,000 × 100 percent share = $12,000 indemnity payment.
You also have a 100 percent share in 150 acres of type B popcorn in the same unit, with a guarantee of 2,250 pounds per acre and a price election of $.10 per pound. You are only able to harvest 70,000 pounds. Your total indemnity for both popcorn types A and B would be calculated as follows:
1 ..... 100 acres × 2,500 pounds = 250,000 guarantee for type A and 150 acres × 2,250 pounds = 337,500 pound guarantee for type B;
2 ..... 250,000 pound guarantee × $.12 price election = $30,000 value of guarantee for type A and 337,500 pound guarantee × $.10 price election = $33,750 value guarantee for type B;
3 ..... $30,000 + $33,750 = $63,750 total value guarantee;
4 ..... 150,000 pounds × $.12 price election = $18,000 value of production to count for type A and 70,000 pounds × $.10 price election = $7,000 value of production to count for type B;
5 ..... $18,000 + $7,000 = $25,000 total value of production to count;
6 ..... $63,750 − $25,000 = $38,750 loss; and
7 ..... $38,750 × 100 percent = $38,750 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d));

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production from the insurable acreage in the unit;

(3) All harvested and appraised production lost or damaged by uninsured causes; and

(4) For processor contracts that stipulate the amount of production to be delivered, all harvested popcorn production from any other insurable unit that has been used to fulfill your processor contract applicable to this unit.

(5) Any production from yellow or white dent corn will be counted as popcorn on a weight basis and any production harvested from plants growing in the insured crop may be counted as popcorn production on a weight basis.

(6) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(d) Mature popcorn may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point for moisture in excess of 15 percent. We may obtain samples of the production to determine the moisture content.

(2) Popcorn production will be eligible for quality adjustment if, due to an insurable cause of loss that occurs within the insurance period, it is not merchantable popcorn and is rejected by the processor. The production will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the base contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

14. Late Planting

Late planting provisions in the Basic Provisions are applicable for popcorn if you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

15. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on June 11, 1998.

Robert Prchal,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–16147 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–5]

Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Class E airspace at Kotzebue, AK. The establishment of Global Positioning system (GPS) instrument approaches to runway (RWY) 8 and RWY 26 at Kotzebue, AK, made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kotzebue, AK.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1998, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Kotzebue, AK, was published in the Federal Register (63 FR 17743). The proposal was necessary due to the establishment of GPS instrument approaches to RWY 8 and RWY 26.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Kotzebue, AK, due to the establishment of GPS instrument approaches to RWY 8 and RWY 26. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kotzebue, AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; 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 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.

* * * * *

AAL AK E5 Kotzebue, AK [Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME
(Lat. 66°53′08″ N., long. 162°32′24″ W.)
Hotham NDB
(Lat. 66°54′05″ N., long. 162°33′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Ralph Wien Memorial Airport and within 14 miles of the Kotzebue VOR/DME extending clockwise from the 206° radial to the 130° radial and within 4 miles southeast and 8 miles northwest of the Hotham NDB 039° bearing extending from the NDB to 16 miles northeast of the NDB and within 4 miles north and 8 miles south of the Kotzebue VOR/DME 278° radial extending from the VOR/DME to 20 miles west of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 18 miles of the Kotzebue VOR/DME clockwise from the 020° radial to the 130° radial and within 38 miles of the Kotzebue VOR/DME clockwise from the 130° radial to the 314° radial and within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from the VOR/DME to 34 miles east of the VOR/DME; and that airspace extending upward from 5,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from 34 miles east of the VOR/DME to 51.3 miles east of the VOR/DME; and that airspace extending upward from 7,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial at 51.3 miles east of the Kotzebue VOR/DME widening to 7.4 miles each side of the 103° radial at 96 miles east of the Kotzebue VOR/DME.

* * * * *

Issued in Anchorage, AK, on June 11, 1998.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–16307 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–22]

RIN 2120–AA66

Establishment of VOR Federal Airway V–605; SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Federal Airway 605 (V–605) from Holston Mountain, TN, to Spartanburg, SC. Establishing V–605 will expedite the flow of air traffic and reduce the workload for pilots and controllers. In addition, the FAA will not adopt as final the portion of the proposal to establish Federal Airway V–603 from Pulaski, VA, to Columbia, SC.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, 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:

History

On June 17, 1996, the FAA proposed to amend 14 CFR part 71 (part 71) to establish two Federal Airways, V–603 and V–605 (61 FR 30550). The FAA anticipated aligning V–603 with the Pulaski Very High Frequency Omnidirectional Range (VORTAC). However, V–603 could not be certified for navigation because of problems associated with the Pulaski VORTAC. Consequently, the FAA will not adopt as final the portion of the proposal to establish V–603. Interested parties were invited, by the FAA, to participate in this rulemaking effort by submitting written comments on the proposal. No comments objecting to the proposal were received. Except for editorial changes and the decision not to adopt as final the portion of the proposal to establish V–603, this amendment is the same as that proposed in the notice. 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 Federal airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 establishes Federal Airway V–605 from Holston Mountain, TN, to Spartanburg, SC. Establishing V–605 will expedite the flow of air traffic and reduce the workload for pilots and controllers. The FAA will not adopt as final the portion of the proposal to establish V–603 from Pulaski, VA, to Columbia, SC.

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 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)—Domestic VOR Federal Airways

* * * * *

V–605 [New]

From Holston Mountain, TN; INT Holston Mountain 171° and Spartanburg, SC, 358° radials; to Spartanburg.

* * * * *

Issued in Washington, DC, on June 8, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15959 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–30]

RIN 2120–AA66

Modification of VOR Federal Airway V–405; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Federal Airway 405 (V–405) between Pawling, NY, Very High Frequency Omnidirectional Range (VOR) and the CASSH Intersection, NY. This action will enhance air traffic control (ATC) and allow for better utilization of the navigable airspace.

DATES: Effective 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 6, 1998.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 97–AEA–30, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430. Comments may be also sent electronically to the following Internet address: 9-Direct Rule-Comments@faa.dot.gov. Comments delivered must be marked Airspace Docket No. 97–AEA–30.

The official docket may be examined weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m., in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, 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:

The Rule

The FAA is amending 14 CFR part 71 to modify V–405 from the Pawling, NY, VOR to the CASSH Intersection. Modifying this airway will enhance ATC and will allow for better utilization of that airspace. Currently, V–405 extends southeast from the Pawling VOR to a dog leg beginning at the CASSH Intersection and continues to the southeast from that intersection to the Carmel, NY, VOR. The section of V–405 between Pawling VOR and the CASSH Intersection is unusable for navigation in the current configuration and must be realigned. Three Federal airways, V–123, V–483, and V–405, converge at the CASSH Intersection. The alignment of each airway is significant to ensure that aircraft operations are contained within the assigned airspace as required for ATC. Realigning V–405 will allow the airway to be used for navigation and will allow for better utilization of that airspace.

Incorporation by Reference

VOR Federal airway designations 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 Federal airway 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 adverse or negative comment and therefore is issuing it as a direct final rule. This regulation is a minor technical amendment involving a one-degree change in the radial for the airway. 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 sumitted 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 would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environment, and energy-related 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. 97–AEA–30." 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 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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (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]

The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–405 [Revised]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 050 and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; INT Carmel 344° and Pawling, NY, 204° radials; Pawling; INT Pawling 059° and Bradley, CT 266° radials; Bradley; Providence, RI; INT Providence 151° and Martha's Vineyard, MA, 267° radials; to Martha's Vineyard.

* * * * *

Issued in Washington, DC, on June 8, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15958 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29248; Amdt. No. 1873]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591–;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adoption these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 12, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b((2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NOB/DME; § 97.29 ILS, ILS/DME, ISMLS MLS, MLS/DME, MILS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective 16 July 1998*

Indiana, PA, Indiana County/Jimmy Stewart Field, NDB OR GPS–A, Amdt 5, CANCELLED
Greer, SC, Greenville-Spartanburg, GPS RWY 21, Amdt 1
Columbia, SC, Columbia Owens Downtown, LOC RWY 31, Amdt 1

** * * Effective 13 August 1998*

St Paul Island, AK, St Paul Island, GPS RWY 18, Orig.
St Paul Island, AK, St Paul Island, GPS RWY 36, Orig.
Tuscalossa, AL, Tuscaloosa Muni, GPS RWY 4, Orig
Tuscalossa, AL, Tuscaloosa Muni, GPS RWY 22, Orig
Hanford, CA, Hanford Muni, VOR OR GPS–A, Amdt 8
Merced, CA, Merced Municipal/Macready Field, VOR RWY 12, Amdt 7
Merced, CA, Merced Municipal/Macready Field, GPS RWY 30, Orig
Merced, CA, Merced Municipal/Macready Field, GPS RWY 12, Orig
Washington, DC, Washington National, NDB RWY 36, Amdt 10
Washington, DC, Washington National, COPTER ILS 007, Orig
Washington, DC, Washington National, ILS RWY 36, Amdt 39
Ormond Beach, FL, Ormond Beach Muni, GPS RWY 8, Orig
Sebring, FL, Sebring Regional, GPS RWY 36, Orig
Sebring, FL, Sebring Regional, NDB OR GPS RWY 36, Amdt 4, CANCELLED
Canton, GA, Cherokee County, NDB RWY 4, Amdt 2
McPherson, KS, McPherson, VOR/DME RWY 36, Amdt 6
McPherson, KS, McPherson, NDB RWY 18, Amdt 1
McPherson, KS, McPherson, GPS RWY 18, Orig
McPherson, KS, McPherson, GPS RWY 36, Amdt 1
Biddeford, ME, Biddeford Muni, VOR OR GPS–A, Amdt 5, CANCELLED
Biddeford, ME, Biddeford Muni, VOR RWY 6, Orig
Biddeford, ME, Biddeford Muni, GPS RWY 6, Orig
Appleton, MN, Appleton Muni, NDB RWY 13, Amdt 1
Appleton, MN, Appleton Muni, GPS RWY 13, Orig
Olive Branch, MS, Olive Branch, LOC RWY 18, Amdt 1
Olive Branch, MS, Olive Branch, NDB OR GPS RWY 18, Amdt 4
Olive Branch, MS, Olive Branch, NDB OR GPS RWY 36, Amdt 5
Cameron, MO, Cameron Mermorial, NDB OR GPS RWY 35, Amdt 1
Bowman, ND, Bowman Muni, NDB RWY 29, Amdt 3
Bowman, ND, Bowman Muni, GPS RWY 29, Orig
Hettinger, ND, Hettinger Municipal, GPS RWY 30, Amdt 1
Atkinson, NE, Stuart-Atkinson Muni, VOR/DME RWY 29, Orig
Atkinson, NE, Stuart-Atkinson Muni, GPS RWY 29, Orig
Painesville, OH, Casement, NDB OR GPS–B, Amdt 8, CANCELLED
Easton, PA, Easton, VOR–C, Amdt 2, CANCELLED
Easton, PA, Easton, GPS RWY 36, Orig
Philadelphia, PA, Philadelphia Intl, ILS RWY 9R, Amdt 8
Philadelphia, PA, Philadelphia Intl, ILS RWY 27R, Amdt 8
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 8
Philadelphia, PA, Philadelphia Intl, GPS RWY 17, Orig
Rock Hill, SC, Rock Hill/York County/Bryant Field, VOR/DME OR GPS–B, Amdt 5A, CANCELLED
Spartanburg, SC, Spartanburg Downtown Memorial, VOR/DME RNAV OR GPS RWY 5, Amdt 6B, CANCELLED
Arlington, TN, Arlington Muni, LOC RWY 15, Amdt 2
Arlington, TN, Arlington Muni, NDB OR GPS RWY 15, Amdt 8
Arlington, TN, Arlington Muni, NDB OR GPS RWY 33, Amdt 8
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig, CANCELLED
Memphis, TN, Memphis Intl, VOR OR GPS RWY 27, Amdt 1B, CANCELLED
Memphis, TN, Memphis Intl, VOR/DME RWY 18R, Orig
Memphis, TN, Memphis Intl, NDB OR GPS RWY 9, Amdt 26
Memphis, TN, Memphis Intl, ILS RWY 9, Amdt 25
Memphis, TN, Memphis Intl, ILS RWY 18L, Amdt 1
Memphis, TN, Memphis Intl, ILS RWY 18R, Amdt 12
Memphis, TN, Memphis Intl, ILS RWY 27, Amdt 2
Memphis, TN, Memphis Intl, ILS RWY 36L, Amdt 13
Memphis, TN, Memphis Intl, ILS RWY 36R, Amdt 1
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Amdt 1, CANCELLED
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Orig
Millington, TN, Charles W. Baker, GPS RWY 18, Orig
Millington, TN, Millington Muni, VOR/DME RWY 22, Amdt 1, CANCELLED
Millington, TN, Millington Muni, VOR/DME RWY 22, Orig
Millington, TN; Millington Muni, ILS RWY 22, Amdt 1
Shelbyville, TN, Bomar Field-Shelbyville Muni, GPS RWY 18, Orig
Shelbyville, TN, Bomar Field-Shelbyville Muni, GPS RWY 36, Orig
Abilene, TX, Abilene Regional, GPS RWY 17L, Orig
Abilene, TX, Abilene Regional, GPS RWY 35R, Orig
Danville, VA, Danville Regional, ILS RWY 2, Amdt 3
Richmond, VA, Chesterfield County, LOC RWY 33, Amdt 1A, CANCELLED
Richmond, VA, Chesterfield County, ILS RWY 33, Orig
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME OR GPS RWY 5, Orig-A, CANCELLED
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME OR GPS RWY23, Admt 10A, CANCELLED

[FR Doc. 98–16545 Filed 6–19–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29249; Amdt. No. 1874]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPS, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports Navigation (air).

Issued in Washington, DC on June 12, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective upon publication:

FDC date	State	City	Airport	FDC No.	SIAP
05/15/98	MO	Jefferson City	Jefferson City Memorial	8/2964	LOC BC Rwy 12, Amdt 6A... This Replaces FDC 8/2964 Published in TL98–13
05/27/98	MI	Bellaire	Bellaire/Antrim County	8/3276	GPS Rwy 2, Orig...
05/27/98	MN	Warroad	Warroad Intl-Swede Carlson Field	8/3275	NDB or GPS Rwy 31, Amdt 1...
05/28/98	ID	Hailey	Friedman Memorial	8/3301	GPS Rwy 31, Orig...
05/28/98	NC	Wadesboro	Anson County	8/3296	NDB or GPS Rwy 16, Amdt 1B...
05/28/98	NY	Utica	Oneida County	8/3292	NDB or GPS Rwy 15 Amdt 9A...
05/28/98	NY	Utica	Oneida County	8/3293	ILS Rwy 33 Amdt 1A...
05/28/98	NY	Utica	Oneida County	8/3294	ILS Rwy 15 Amdt 3A...
05/28/98	OH	Painesville	Concord Airpark	8/3309	VOR or GPS–A, Orig...

FDC date	State	City	Airport	FDC No.	SIAP
06/29/98	KS	Atwood	Atwood-Rawlins County City-County	8/3324	NDB or GPS Rwy 16, Amdt 1...
05/29/98	KS	Norton	Norton Muni	8/3327	NDB or GPS Rwy 17, Amdt 2...
05/29/98	KS	Norton	Norton Muni	8/3329	NDB or GPS Rwy 35, Amdt 2...
05/29/98	KS	Oberlin	Oberlin Muni	8/3330	NDB or GPS Rwy 35, Orig...
05/29/98	KS	Phillipsburg	Phillipsburg Muni	8/3325	NDB or GPS Rwy 31, Amdt 6...
05/29/98	MO	St. Louis	Lambert-St. Louis Intl	8/3336	ILS Rwy 12R, Amdt 21...
05/29/98	NY	Albany	Albany County	8/3344	VOR or GPS Rwy 19 Admt 19...
06/01/98	AL	Dothan	Dothan	8/3400	VOR–A or TACAN or GPS Amdt 11A...
06/01/98	AL	Dothan	Dothan	8/3401	LOC BC Rwy 14 Amdt 6B...
06/01/98	AL	Dothan	Dothan	8/3402	ILS Rwy 32 Amdt 7B...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3397	VOR or GPS Rwy 29, Amdt 26A...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3398	ILS Rwy 29, Admt 3A...
06/01/98	AL	Muscle Shoals	Northwest Alabama Regional	8/3399	VOR/DME or GPS Rwy 11, Admt 5A...
06/01/98	MS	Laurel	Hseler-Noble Field	8/3419	NDB Rwy 13, Amdt 6...
06/01/98	MS	Laurel	Hseler-Noble Field	8/3424	VOR/DME–A, Amdt 2...
06/01/98	MS	Prentiss	Prentiss-Jefferson Davis County	8/3422	NDB or GPS Rwy 30, Orig...
06/01/98	PR	Ponce	Mercedita	8/3420	VOR Rwy 30, Amdt 10...
06/01/98	PR	San Juan	Luis Munoz Marin Intl	8/3413	NDB Rwy 8, Amdt 7A...
06/01/98	PR	San Juan	Luis Munoz Marin Intl	8/3442	ILS Rwy 8, Amdt 15A...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3485	GPS Rwy 27 Orig...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3486	GPS Rwy 9 Orig...
06/02/98	DE	Dover/Chesworld	Delaware Airpark	8/3487	VOR Rwy 27 Amdt 6...
06/02/98	FL	Miami	Miami Intl	8/3475	ILS Rwy 9L, Amdt 28A...
06/02/98	FL	Miami	Miami Intl	8/3478	ILS Rwy 9R, Amdt 8B...
06/02/98	FL	Miami	Miami Intl	8/3480	GPS Rwy 27R, Orig...
06/02/98	FL	Miami	Miami Intl	8/3482	GPS Rwy 9R, Orig...
06/02/98	FL	Miami	Miami intl	8/3483	ILS Rwy 27R, Amdt 13...
06/02/98	FL	Orlando	Kissimmee Muni	8/3467	VOR/DME or GPS–A, Amdt 7A...
06/02/98	MS	Columbia	Columbia-Marion County	8/3463	VOR/DME or GPS Rwy 23, Amdt 4...
06/02/98	NC	Roanoke Rapids	Halifax County	8/3454	NDB or GPS Rwy 5 Amdt 3...
06/02/98	PR	San Juan	Luis Munoz Marin Intl	8/3488	NDB Rwy 10, Amdt 5A...
06/03/98	FL	Crestview	Bob Sikes	8/3502	NDB or GPS Rwy 17 Amdt 2A...
06/03/98	WA	Payallup	Pierce County-Thun Field	8/3508	GPS Rwy 34 Orig...
06/04/98	AL	Dothan	Dothan	8/3551	VOR or GPS Rwy 18 Amdt 3A...
06/04/98	AL	Dothan	Dothan	8/3552	VOR or GPS Rwy 14 Amdt 3B...
06/04/98	IL	Chicago	Chicago O'Hare Intl	8/3565	ILS Rwy 14L (Cat I, Cat II and Cat III), Amdt 28B...
06/04/98	MO	Kansas City	Kansas City Intl	8/3537	ILS Rwy 19R, Amdt 9...
06/04/98	MO	Springfield	Springfield-Branson Regional	8/3538	ILS Rwy 2, Amdt 16B...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3568	VOR Rwy 27, Orig...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3570	NDB or GPS Rwy 27, Amdt 12...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3571	VOR–B, Orig...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3572	NDB or GPS Rwy 9, Amdt 9...
06/04/98	OH	Willoughby	Willoughby Lost Nation Muni	8/3573	VOR–A, Orig...
06/04/98	OH	Wooster	Wayne County	8/3540	VOR or GPS Rwy 10, Orig–A...
06/04/98	OH	Wooster	Wayne County	8/3542	VOR Rwy 28, Orig–A...
06/04/98	OH	Wooster	Wayne County	8/3543	NDB Rwy 28, Amdt 7A...
06/05/98	FL	Tampa	Peter O'Knight	8/3612	Radar–1, Amdt 4...
06/05/98	FL	Tampa	Peter O'Knight	8/3613	NDB or GPS–A, Orig...
06/05/98	FL	Tampa	Peter O'Knight	8/3614	NDB or GPS Rwy 3, Amdt 10A...
06/05/98	GA	Brunswick	Malcolm McKinon	8/3610	NDB Rwy 4, Orig...
06/05/98	MI	West Branch	West Branch Community	8/3590	VOR Rwy 27, Orig–C...
06/05/98	MI	West Branch	West Branch Community	8/3591	NDB or GPS Rwy 27, Amdt 6B...
06/05/98	MS	Columbus/West Point-Starkville.	Golden Triangle Regional	8/3599	ILS Rwy 18, Amdt 6...
06/05/98	OH	Marion	Marion Muni	8/3596	VOR or GPS–A, Orig–A...
06/08/98	MS	Walls	Twinkletown	8/3652	Radar–1 Amdt 2...
06/08/98	OH	Marion	Marion Muni	8/3650	NDB or GPS Rwy 12, Amdt 4A...
06/08/98	TX	Abilene	Abilene Regional	8/3670	VOR or GPS–A, Amdt 8...
06/08/98	TX	Abilene	Abilene Regional	8/3671	VOR or GPS Rwy 22, Amdt 3...
06/08/98	TX	Abilene	Abilene Regional	8/3672	LOC BC Rwy 17L, Amdt 3...
06/08/98	TX	Abilene	Abilene Regional	8/3676	ILS Rwy 35R, Amdt 6...
06/08/98	TX	Abilene	Abilene Regional	8/3680	NDB or GPS Rwy 35R, Amdt 5...
06/09/98	TX	McAllen	McAllen Miller Intl	8/3700	LOC BC Rwy 31, Amdt 9...

[FR Doc. 98–16544 Filed 6–19–98; 8:45 am]
BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trading Hours

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is making amendments to its Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney-Advisor, Contract Markets, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION: Regulation 1.41(k) allows a change in trading hours which does not permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time in the city where the contract market is located to be deemed approved by the Commission at the close of business one business day after properly labeled written notice of the change is received by the Commission if the change is not inconsistent with the Commodity Exchange Act or the Commission's other regulations. Trading hour changes which do permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time must be submitted to the Commission for approval pursuant to Regulation 1.41(b).

On May 1, 1998 (63 FR 24142), the Commission published for comment proposed amendments to Regulation 1.41(k) to allow additional changes in trading hours, as set forth below, to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation. The comment period for the proposal was 15 days and closed on May 18, 1998. The Commission received two comments in response to the notice and both were supportive of the proposal.

The Commission has determined to amend Regulation 1.41(k) in the manner previously notice. As revised, Regulation 1.41(k) will allow additional changes is trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the subsection. Specifically, if a contract market has previously received Commission approval for trading between 6:00 p.m. and 7:00 a.m. in at least one of its designated contracts, it may submit all subsequent changes in trading hours pursuant to Regulation 1.41(k). Thus, under revised 1.41(k), the first time a contract market proposes changing trading hours for any of its designated contracts to fall between the hours of 6:00 p.m. to 7:00 a.m., the proposal must be submitted to the Commission for approval pursuant to Regulation 1.41(b). The Commission will review such initial proposal to ensure that adequate systems and procedures are in place to accommodate the expanded trading hours. Matters to be addressed will include, among other matters, clearing, margin, market data, and surveillance programs. Any subsequent change to trading hours can be approved under the expedited procedures of Regulation 1.41(k).

The Commission notes that listing a contract for trading on an automated trading system will constitute more than a change in trading hours. It will also be a change in the method of trading. Accordingly, neither the initial establishment of an electronic trading system nor the subsequent listing of additional contracts will be eligible for treatment under Regulation 1.41(k). However, changes in the trading hours of a contract that is already listed on an electronic system will be eligible for treatment under revised Regulation 1.41(k).

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed regulation has no burden, the group of regulations (3038–0022), of which this is a part has the following burden:

Average burden hours per response, 3,546.26
Number of Respondents, 10,971
Frequency of response, on occasion

Copies of the OMB approved information collection package associated with this regulation may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting regulations, consider the impact of those regulations on small businesses. The only entity this rulemaking will affect would be contract markets. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, (47 FR 18618 (April 30, 1982)). Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumers protection, Reporting and recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular Section 8a thereof, 7 U.S.C. 12a, the Commission hereby amends Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 is amended by revising paragraph (k)(1) to read as follows: 1.41 Contract market rules; submission of rules to the Commission, exemption of certain rules.

* * * * *

(k) *Trading Hours.* (1) Notwithstanding the provisions of paragraph (b) of this section and except in connection with an initial listing of a contract on an automated trading system, all changes in trading hours shall be deemed approved by the Commission at the close of business one business day after written notice of such a change is received by the Commission if:

(i) The change is not inconsistent with any provision of the Act or the Commission's regulations;

(ii) For a change that permits trading anytime between 6:00 p.m. and 7:00 a.m. local time in the city where the contract market is located, the contract

market has previously received Commission approval for trading between such hours in at least one of its designated contracts; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (k) of this section.

* * * * *

Issued in Washington D.C. on June 16, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–16520 Filed 6–19–98; 8:45 am]

BILLING CODE 6351–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AE87

Supplemental Security Income for the Aged, Blind, and Disabled; Charging Administration Fees for Making State Supplementary Payments

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are revising our rules to reflect statutory changes that require the Social Security Administration (SSA) to increase the administration fees it charges States for making supplementary payments on behalf of States.

EFFECTIVE DATE: This rule is effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gareth Dence, Social Insurance Specialist, Division of Payment Policy, Office of Program Benefits Policy, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–9872 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1993, pursuant to amendments made to the Social Security Act (the Act) and to Pub. L. No. 93–66 by section 13731 of Pub. L. No. 103–66, SSA began charging States that had elected Federal administration of optional and/or mandatory State supplementary payments a fee for administering those payments. This regulation reflects section 5102 of Pub. L. No. 105–33 (the Balanced Budget Act of 1997), which increase the administration fee SSA charges States for making supplementary payments on their behalf.

Present Policy

The administration fee is charged monthly and is derived by multiplying the number of State supplementary payments made by SSA on behalf of a State for a month by the applicable dollar rate for the fiscal year (FY), as prescribed in section 13731 of Pub. L. No. 103–66. The dollar rates are as follows: for FY 1994, $1.67; for FY 1995, $3.33; for FY 1996, $5.00. For FY 1997 and each succeeding FY, the statutory rate reflected in section 13731 of Pub. L. No. 103–66 is $5.00 or such different rate as determined by SSA to be appropriate for any particular State. In making this determination, SSA may take into account the complexity of administering the State's supplementary payment program.

Revised Policy

We are amending the regulation at § 416.2010(b) to reflect section 5102 of Pub. L. No. 105–33, that increases the fees SSA is required to charge for administering State supplementary payments.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, 5 U.S.C. 601 *et seq.* is not required.

Paperwork Reduction Act

This rule imposes no reporting/recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, SSA follows the procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of this final rule we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the NPRM procedures. This rule contains no discretionary policy; the changes made by this final rule merely conform our regulation to the statutory changes made by Pub. L. No. 105–33. The statute requiring the increase in State supplementation administration fees was effective on August 5, 1997. Therefore, we find that opportunity for prior comment is unnecessary. In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). We have determined that a delay in the effective date of this rule is unnecessary because the rule contains no discretionary policy but merely conforms our regulations to a statutory provision that is already in effect.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Subpart T of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart T—[Amended]

1. The authority citation for subpart T of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c note, 1431 note and 42 U.S.C. 1382e note); secs. 1(a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 note, 1382e note).

2. Section 416.2010 is amended by removing "and" at the end of paragraph (b)(1)(iii), by revising (b)(1)(iv), and by adding (b)(1) (v) through (x) to read as follows:

§ 416.2010 Essentials of the administration agreements.

* * * * *

(b) *Administrative costs.*

(1) * * *

(iv) For fiscal year 1997, $5.00;

(v) For fiscal year 1998, $6.20;

(vi) For fiscal year 1999, $7.60;

(vii) For fiscal year 2000, $7.80;
(viii) For fiscal year 2001, $8.10;
(ix) For fiscal year 2002, $8.50; and
(x) For fiscal year 2003 and each succeeding fiscal year—

(A) The applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(B) Such different rate as the Commissioner determines is appropriate for the State taking into account the complexity of administering the State's supplementary payment program.

[FR Doc. 98–16207 Filed 6–19–98; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF–399; Re: Notice No. 853]

RIN 1512–AA07

Diablo Grande Viticultural Area (97–104)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area located in the western foothills of Stanislaus County, California, to be known as "Diablo Grande" under 27 CFR part 9. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. This viticultural area is the result of a petition submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the viticultural area and developers of the Diablo Grande Resort Community.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

Dr. Vincent E. Petrucci, Sc.D., petitioned ATF on behalf of the Diablo Grande Limited Partnership, for the establishment of a new viticultural area located in the western foothills of Stanislaus County, California, to be known as "Diablo Grande." The Diablo Grande Limited Partnership is the principal property owner within the proposed viticultural area and the developer of the Diablo Grande Resort Community. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. Currently there are 35 acres of grapes planted with an additional 17 acres planned for 1997. The petitioner claims that the area can accommodate an additional 2700 acres of future grape plantings.

Comments

A Notice of Proposed Rulemaking, Notice No. 853 (62 FR 34027) was published in the **Federal Register** on June 24, 1997, requesting comments from all interested persons concerning the proposed "Diablo Grande" viticultural area. No comments were received in response to this notice.

Evidence That the Name of the Area Is Locally or Nationally Known

"Diablo Grande," is the name of the destination resort and residential community that occupies the viticultural area. The petitioner stated that this name was given to the area because of its proximity to Mount Diablo, the highest peak of the Pacific Coast mountain range. Mount Diablo is located 38–40 miles due north of the proposed area. The petitioner emphasized the fact that the proposed area lies in the Diablo Mountain Range, which extends from Mount Diablo State Park in Contra Costa County to the south of and beyond the proposed "Diablo Grande" viticultural area located in Stanislaus County. There is evidence that the name, "Diablo Grande," has become associated with the area by both the residents of California, and perhaps the nation, as a result of the development of the destination resort and residential community. The resort community has been in existence since the early 1990s. As evidence that the area is known as "Diablo Grande," the petitioner submitted copies of 21 newspaper articles that discuss the development of the resort. With the exception of the Golf Course Report, Alexandria, Virginia, all of the articles are from local California newspapers.

There is also evidence that the area occupied by the resort was historically known as the "Oak Flats Valley." A working ranch, known as the Oak Flats Valley Ranch once occupied this land. Many of the newspaper articles submitted by the petitioner refer to the area as the "Oak Flats Valley Ranch" or the "Oak Flats Valley." No evidence was provided that the area was tied to Mount Diablo prior to the development of the resort. Accordingly, ATF solicited comments in Notice No. 853 on whether the use of the name "Diablo Grande" was proper for this area. No comments were received on this issue. Consequently, based on the evidence submitted by the petitioner, ATF believes the name "Diablo Grande" is now associated with the area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

As evidence that the boundaries of the viticultural area are as specified in the petition, the petitioner submitted a map titled, "Stanislaus County Vicinity Map" drawn by Thompson-Hysell Engineers. A more detailed map entitled "Concept Plan Diablo Grande," prepared by T.R.G. Land Resources, Inc., was also submitted. In addition, the petitioner submitted a newspaper article from The Modesto Bee dated June 28, 1993, showing the boundary area (map) in respect to Interstate Highway 5, the city of Patterson, the City of Newman, and the Santa Clara County line. The border for "Diablo Grande" is illustrated on the "Stanislaus County Vicinity Map" and the maps in the newspaper article giving the location within Stanislaus County, California. The Modesto Bee article describes the site as being located about five miles west of Interstate 5 and seven miles southwest of Patterson consisting of gently sloping hills to steep ridges in the Diablo Range, an eastern arm of the Coast Ranges. The article further describes the site as encompassing portions of three major watersheds—Orestimba, Crow, and Salado Creeks.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The petitioner provided a table of heat summation in degree days illustrating the contrast in temperature between the viticultural area and areas immediately outside the viticultural area. The data was taken from four separate weather stations located in Newman (10 miles east), Westley (10 miles north), Tracy (25 miles north) and Modesto (30 miles northeast). The petitioner chose these areas because they were the closest areas with climate records. According to the table, the "Diablo Grande" viticultural area is 384 degree days warmer than Modesto, 191 degree days cooler than Newman, 243 degree days cooler that Tracy, and 1022 degree days cooler than Westley.

The petitioner submitted a four year record of rainfall spanning from 1992 to 1995 for the viticultural area. The petitioner also provided a table illustrating the contrast in monthly and annual rainfall in inches between the "Diablo Grande" viticultural area and areas immediately outside of the viticultural area. The rainfall data shows that the "Diablo Grande" viticultural area has an annual rainfall 13.8% to 22.6% higher that the other four areas (Newman, Westley, Modesto, and Tracy). The higher rainfall in the viticultural area is due to its higher elevation (800 to 2600 feet) as compared to the other four areas which range in elevation from 40 to 300 feet. Rainfall generally occurs during the winter in all five areas, with little or no rainfall during the summer months.

Due to its elevation and the protective mountains, the viticultural area lies above the fog belt in contrast with areas immediately outside of the viticultural area. In the Newman, Patterson, and Westley areas, fog is a common occurrence throughout the rainy season in all but the foothill regions.

The predominant wind directions are from northeast to northwest in the "Diablo Grande" viticultural area due to the orientation of the many mini-valleys encompassing the area and the wind deflection caused by the hills surrounding these mini-valleys. This is a unique feature of the viticultural area's micro-climate as contrasted with the Newman/Westley areas where the reverse is true with the predominant winds coming from the northwest, typical of the flat lands outside of the viticultural area's perimeter.

Soils

The soil characteristics of the "Diablo Grande" viticultural area are not only different and distinct from those of the lower foothills and Central Valley to the east and north, but they are also different from other areas of the Diablo Range to the south and west of the viticultural area.

The petitioner provided a general description of the soils in the form of a report entitled, "Diablo Grande Specific Plan Draft Environmental Impact Report" prepared by LSA Associates, Inc., Pt. Richmond, California for the Stanislaus County Department of Planning and Community Development. The petitioner also submitted a report from the Soil Conservation Service which recently mapped soils within the viticultural area and identified 16 major soil types.

Extensive soil sampling and detailed analysis (both physical and chemical) have been conducted at two different locations within the viticultural area. In December of 1989, thirteen samples were taken at various sites in the vicinity of the Oak Flat Ranch. In May of 1996, fourteen samples from Isom Ranch were collected and analyzed. A copy of this analysis was included with the petition.

These reports show that a majority of the soils found in the "Diablo Grande" viticultural area are composed of the following series listed in approximate order of occurrence: Arburua loam, Wisflat sandy loam, Contra Costa clay loam, and San Timoteo sandy loam, with lesser amounts of Zacharias clay loam and gravelly clay loam. Most of the soils are complexes made up of two or more of these series as well as occasional rock outcrops of exposed sandstone and shale. In these complexes, the soil series are so intimately intermixed that it is not practical to separate them geographically.

The reports show that the soils within the viticultural area typically have slopes ranging from 30% to 75% and elevations from 400 to 2700 feet. An exception is the relatively minor Zacharias series which has slopes of 2% to 5% and elevations of 200 to 400 feet. The soils in the viticultural area are derived from sandstone and vary from shallow to very deep with most of the complexes showing moderate depth. The soils are well-drained to somewhat excessively-drained. Permeability varies from slow to moderately rapid, surface run-off rates are rapid and, according to the petitioner, the potential for water erosion can be severe. The petitioner provided a table giving a complete description of the characteristics for each soil type.

In contrast to the soils of the viticultural area, the soils of the surrounding areas are largely composed of different soil series with different characteristics, including elevations and slopes. The petitioner provided an exhibit defining the various soil series and soil types, and an exhibit with aerial photographic maps showing soil type location by map numbers.

While most of the soil series which are found within the "Diablo Grande" viticultural area can also be found in the nearby surrounding areas, these series represent very small portions of the total in those surrounding areas. Additionally, many of the soil series which make up the major soil types of the surrounding areas are not found at all within the viticultural area. These soil types include Capay clay, Vernalis clay loam, Stomar clay loam, Chaqua clay loam, Calla clay loam, Carbona clay, Alo clay, Vaquero clay, El Salado loam and fine sandy loam. These series are found to the east and north of the viticultural area. Most of these series have slopes of 0% to 2% and elevations of 25 to 400 feet with four of these series having slopes up to 8%, 15%, 30%, and 50% respectively and elevations from 300 to 1600 feet.

There is another major difference between the "Diablo Grande"

viticultural area soils and most of those to the east and north. The "Diablo Grande" soils are residual soils formed from sedimentary deposits of sandstone and calcareous sandstone while most of the surrounding soils are from alluvial deposits of mixed rock parent material having lower slopes and elevations.

The area surrounding the "Diablo Grande" viticultural area to the west and south includes the Orestimba Creek Canyon beyond which lies a more rugged portion of the Diablo Range. Much of the land directly west of the viticultural area is part of the Henry W. Coe State Park and although this area includes some of the same soil series as the "Diablo Grande" viticultural area, there are also many new series including Gonzaga clay, Honker clay, Franciscan clay loam, Vellecitos clay, Gaviota gravelly loam, Henneke clay, Hentine loam, and Hytop clay. These soils generally have slopes of 30% to 75% and elevations of 700 to 3300 feet.

Topography

The geography of the viticultural area sets it apart from the surrounding areas in several respects. Three main water courses traverse the area: Salado Creek, Crow Creek, and Orestimba Creek. Salado and Crow Creek traverse the area from the vicinity of Mikes Peak along the western boundary of the viticultural area, northeast and east respectively, toward Interstate 5. Orestimba Creek traverses the southwestern and southern boundary line as it flows eastward.

Current vineyard plantings are at elevations ranging from 1000 feet mean sea level (msl) near the vineyard located in the vicinity of the Oak Flat Ranch to 1800 feet msl at the Isom Ranch. These vineyard site elevations are the highest elevations where grapes are grown in Stanislaus County. This contrasts with other Stanislaus County vineyards outside the "Diablo Grande" viticultural area where grapes are grown at elevations ranging from 70 to 90 feet at Modesto to 300 to 340 feet at the base of the foothills near Patterson where a newly planted vineyard (1996) of 90 acres exists approximately 4.2 miles east of the viticultural area boundary. The petitioner distinguishes this vineyard site from the "Diablo Grande" viticultural area by noting that the Patterson site is 340 feet lower and has a soil type which is all Vernalis-Zacharias complex with 0% to 2% slopes. These conditions do not exist in the "Diablo Grande" viticultural area.

The topographic features of the viticultural area include many "mini-valleys" as a result of its mountainous structure. This provides several attributes not found in the vineyards planted on the flat lands in the interior of Stanislaus County. Grapes grown on the terraced hillsides of the viticultural area are subject to a mesoclimate (or topoclimate or site climate) which can vary from the general macroclimate due to differences mainly in elevation and slope. Thus, site selection becomes an important feature when working with this type of topography as contrasted to the flat lands of 1% to 2% slopes. There is the opportunity to grow grapes on slopes (15%–30%) that have western, eastern, southern, or northern exposure or any combination of all four slope exposures.

The petitioner provided a diagram purporting to show how mesoclimates are influenced by sloping contour topography. The southern and western slopes receive a greater exposure to sunshine and, therefore, accumulate more heat units than the northern or eastern slopes. It is this difference in sunshine and heat that makes the viticultural area's mesoclimate. According to the petitioner, grapes grown on all four slope exposures, when harvested together and crushed as one lot, make wines that differ considerably from grapes grown on the lower elevation flat lands. The petitioner claims that this is the key factor which makes the viticultural area wines distinct from those of the surrounding area. In support of this claim the petitioner provided several letters from staff members at the Viticulture and Enology Research Center, California State University, Fresno and winemakers. These letters indicate that wines made from grapes grown in the "Diablo Grande" viticultural area exhibit characteristics distinctive enough to deserve consideration for a specific appellation. ATF has concluded that there is sufficient evidence to establish the "Diablo Grande," area as a distinct viticultural area under 27 CFR part 9.

Geographic Brand Names

A brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. See 27 CFR 4.39(i). Consequently, establishment of this viticultural area would preclude the use of the term "Diablo Grande" as a brand name for a wine, unless the wine can claim "Diablo Grande" as an appellation of origin, or complies with one of the exceptions in the regulation.

Boundaries

The boundary of the "Diablo Grande" viticultural area may be found on four United States Geological Survey Quadrangle 7.5 minute series (Topographic) maps, entitled Patterson Quadrangle, California—Stanislaus Co., Copper Mtn. Quadrangle, California—Stanislaus Co., Wilcox Ridge, California—Stanislaus Co., and Orestimba Peak, California—Stanislaus Co.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.156 to read as follows:

§ 9.156 Diablo Grande.

(a) *Name.* The name of the viticultural area described in this section is "Diablo Grande".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California—Stanislaus Co., 1953 (Photorevised 1971, Photoinspected 1978);

(2) Copper Mtn. Quadrangle, California—Stanislaus Co., 1953 (Field Check 1956, Aerial Photo 1971);

(3) Wilcox Ridge, California—Stanislaus Co., 1956 (Photorevised 1971);

(4) Orestimba Peak, California—Stanislaus Co., 1955 (Photorevised 1971).

(c) *Boundary.* The Diablo Grande viticultural area is located in the western foothills of Stanislaus County, California. The beginning point is at Reservoir Spillway 780 in section 8, Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point where the 1000 foot contour line crosses the northern section line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section 16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E., on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Oristimba Creek in section 6, T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast and then east/northeast to the point where Orestimba Creek meets Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir Spillway 780 in section 8, T. 6S., R. 7E.

Signed: May 11, 1998.

John W. Magaw,

Director.

Approved: May 29, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–16502 Filed 6–19–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 216, and 250

RIN 1010–AC23

Royalties on Gas, Gas Analysis Reports, Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Mienrals Management Service (MMS), Interior.

ACTION: Final rulemaking; corrections.

SUMMARY: MMS published in the **Federal Register** of May 12, 1998 (63 FR 26361), a final rule commonly known as the "GVS rule" that updated production measurement, surface commingling, and security requirements and made other amendments. The MMS needs to make several minor corrections to the final regulations.

EFFECTIVE DATE: This final rule is effective June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division at (703) 787–1600.

SUPPLEMENTARY INFORMATION: On May 20, 1998 (63 FR 27677) MMS corrected the effective date of the final rule and made two other technical corrections to the final rule. As published and subsequently corrected, the final regulations still contain several errors which may prove to be misleading and are in need of correction.

Corrections of Publication

Accordingly, the publication on May 12, 1998 of the final regulations which were the subject of FR Doc. 98–11803, is corrected as follows:

§ 250.182 [Corrected]

1. On page 26372, in the third column, in § 250.182(g), the first sentence is corrected to read "What correction factors must I use when proving meters with a mechanical-displacement prover, tank prover, or master meter?"

2. On page 26373, in the second column, in § 250.182(k), the word "hydrogen" is corrected to read "hydrocarbon".

§ 250.183 [Corrected]

3. On page 26373, in the second column § 250.183(b)(1) is corrected to read "Submit a written application to, and obtain approval from, the Regional Supervisor before commencing gas production or making changes to previously approved measurement procedures."

4. On page 26373, in the third column, in § 250.183(b)(7) the word "Btu" is corrected to read "(Btu)".

§ 250.184 [Corrected]

5. On page 26374, in the second column, § 250.184(a)(1) is corrected to read "Submit a written application to, and obtain approval from, the Regional supervisor before commencing the commingling of production or making changes to previously approved commingling applications."

Dated: June 15, 1998.

William S. Cook,

Acting Chief, Engineering and Operations Division.

[FR Doc. 98–16507 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–MR–M

PANAMA CANAL COMMISSION

35 CFR Part 115

RIN 3207–AA–47

Board of Local Inspectors: Composition and Functions; Correction

AGENCY: Panama Canal Commission.

ACTION: Final rule; correction.

SUMMARY: The Panama Canal Commission (Commission) published in the **Federal Register** of April 16, 1998, a document which changed the title of the Marine Director to Maritime Operations Director. Inadvertently § 115.2 was incorrectly amended. This document corrects that amendment.

DATES: Effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Telephone: (202) 634–6441, Facsimile: (202) 634–6439, E-mail: pancanalwo@aol.com: or John L. Haines, Jr., Telephone: 011 (507) 272–7511, Facsimile: 011 (507) 272–3748.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of April 16, 1998, (63 FR 18836) to amend 35 CFR 115.2 which also changed the title of the Marine Director to that of Maritime Operations Director. Inadvertently that title was set out incorrectly in § 115.2. This correction corrects that amendment.

In rule FR Doc. 98–9965 published on April 16, 1998, (63 FR 18836 make the following correction. On page 18837, in the second column, remove the words: "Marine Operations Director" and add in their place, "Maritime Operations Director".

Dated: June 16, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–16516 Filed 6–19–98; 8:45 am]

BILLING CODE 3540–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0077; FRL–6112–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 10, 1997, and March 30, 1998. The revisions concern San Diego County Air Pollution Control District (SDCAPCD) Rule 67.10 and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4401. SDCAPCD Rule 67.10 controls volatile organic compound (VOC) emissions from kelp processing and bio-polymer manufacturing operations, and SJVUAPCD Rule 4401 controls VOC emissions from steam-enhanced crude oil production well vents. This final action will incorporate these rules into the Federally-approved SIP and will also permanently stop the sanctions and Federal implementation plan clocks that were started on February 14, 1996, and September 27, 1996, respectively, when EPA published final limited disapproval actions for the State's previous submittals of these rules. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 22, 1998.

ADDRESSES: Copies of these rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For questions regarding SDCAPCD Rule 67.10, contact Patricia Bowlin, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–1188. For questions on SJVUAPCD Rule 4401, contact Mae Wang at the same address, telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California State Implementation Plan (SIP) are San Diego County Air Pollution Control District (SDCAPCD) Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4401, Steam-enhanced Crude Oil Production Well Vents. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 1, 1997, and March 10, 1998, respectively.

II. Background

On October 10, 1997, in 62 FR 52959, EPA proposed to approve SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, into the California SIP. Rule 67.10 was adopted by SDCAPCD on June 25, 1997. The rule was submitted by CARB to EPA on August 1, 1997. On March 30, 1998, in 63 FR 15116, EPA proposed to approve SJVUAPCD Rule 4401, Steam-enhanced Crude Oil Production Well Vents, into the California SIP. Rule 4401 was adopted by SJVUAPCD on January 15, 1998, and was submitted by CARB to EPA on March 10, 1998. Both rules were submitted in response to EPA's 1988 SIP-Call and the 1990 Clean Air Act (CAA or the Act) section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each rule is provided in the appropriate proposed rulemaking document cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rulemaking documents cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluation has been provided in each proposed rulemaking and in the technical support documents available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 52959 and 63 FR 15116. No comments were received.

IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the rules under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the Federally-approved SIP and will also stop the sanctions process and Federal implementation plan clocks, which were started on February 14, 1996, and September 27, 1996, when limited disapproval actions were published in the **Federal Register**. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the CAA.

The final action on these rules serves as a final determination that the deficiencies in these rules have been corrected. Therefore, on July 22, 1998, any sanction or Federal implementation plan clock is permanently stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation

plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866 review.

This final 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.

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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated 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.

D. Submission to Congress and the General Accounting Office

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. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 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)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: June 9, 1998.

David Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (248) and (c) (254) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(248) New and amended regulations for the following APCDs were submitted on August 1, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) San Diego County Air Pollution Control District.

(*1*) Rule 67.10 adopted June 25, 1997.

* * * * *

(254) New and amended regulations for the following APCDs were submitted on March 10, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4401 adopted January 15, 1998.

[FR Doc. 98–16408 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6111–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Beulah Landfill Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Beulah Landfill Site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR

part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Effective June 22, 1998.

ADDRESSES: Comprehensive information on this Site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, Phone: (404) 562–9530, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday—By Appointment Only; and

Media Center, George Stone Vocational School, 2400 Longleaf Drive, Pensacola, Florida 32526–8922, Phone: (850) 944–1424, Hours: 8:00 a.m. to 9:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

SUPPLEMENTARY INFORMATION: EPA announces the deletion of the Beulah Landfill Superfund Site in Pensacola, Escambia County, Florida from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. EPA published a Notice of Intent to Delete the Beulah Landfill Superfund Site from the NPL on April 24, 1998 in the **Federal Register**, (63 FR 20361–20362). EPA received no comments on the proposed deletion; therefore, no responsiveness summary is necessary for attachment to this Notice of Deletion. Deletion of a site from the NPL does not affect the responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, penalties, superfund, Water pollution control, Water supply.

Dated: June 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Beulah Landfill, Pensacola, FL."

[FR Doc. 98–16252 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 482

[HCFA–3005–F]

RIN: 0938–AI95

Medicare and Medicaid Programs; Hospital Conditions of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data

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

ACTION: Final rule.

SUMMARY: This final rule addresses only provisions relating to organ donation and transplantation. It imposes several requirements a hospital must meet that are designed to increase organ donation. One of these requirements is that a hospital must have an agreement with the Organ Procurement Organization (OPO) designated by the Secretary, under which the hospital will contact the OPO in a timely manner about individuals who die or whose death is imminent in the hospital. The OPO will then determine the individual's medical suitability for donation. As well, the hospital must have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as long as the agreement does not interfere with organ donation. The final rule requires a hospital to ensure, in collaboration with the OPO with which it has an agreement, that the family of every potential donor is informed of its option to donate organs or tissues or not to donate. Under the final rule, hospitals must work with the OPO and at least one tissue bank and one eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of organs and tissues take place. In addition, transplant hospitals must provide organ-transplant-related data, as requested by the OPTN, the Scientific Registry, and the OPOs. The hospital must also provide, if requested, such data directly to the Department.

DATES: These regulations are effective on August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Marcia Newton, (410) 786–5265.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

I. Background

A. Key Statutory Provisions

Sections 1861(e) (1) through (8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital must also meet such other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients.

Under this authority, the Secretary has established in regulations the requirements that a hospital must meet to participate in Medicare (42 CFR Part 482, Conditions of Participation for Hospitals).

Section 1905(a) of the Act provides that Medicaid payments must be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii), hospitals generally are required to meet the Medicare Conditions of Participation in order to participate in Medicaid.

Section 1138 of the Act provides that a hospital participating in Medicare must establish written protocols for the identification of potential organ donors that (1) ensure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline donation, (2) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of those families, and (3) require that an organ procurement agency designated by the Secretary be notified of potential organ donors.

B. Why the Hospital/OPO Relationship Must Improve

An estimated 12,000 to 15,000 deaths occurring in the United States every year could yield suitable donor organs. [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall." *Critical Care Medicine* (1996); 24 432–39] However, in 1997, only 5,475 of these deaths resulted in the donation of an organ.

As progress has been made in the science of transplantation, the gap has widened considerably between the number of individuals who could benefit from transplants and the number of organs available for transplantation. In the twelve years since the enactment of Section 1138 of the Act, the number of organ donors has increased by only 33 percent, while the transplant waiting list has grown by 250 percent. As of June 3, 1998, 56,222 individuals were on the waiting list for a transplant, but the number of organs transplanted from cadaveric donors in 1997 numbered only 17,032. Preliminary 1997 data compiled by the Organ Procurement and Transplantation Network contractor indicates that the number of donors (5,475 donors in 1997) increased by only 54 donors or by less than one percent over the 5,421 donors in 1996.

A 1993 Gallup poll showed that 85 percent of Americans support the general concept of organ donation and 69 percent would be somewhat or very likely to donate their own organs. [The Gallup Organization, Inc. "The American Public's Attitudes Toward Organ Donation and Transplantation," A survey prepared by the Gallup Organization, Inc. for The Partnership for Organ Donation, Boston, Massachusetts, (February 1993)] Information from a number of recent studies and from States that have passed organ donor legislation has given us a clearer understanding of the reasons for the disparity between the strong public support for the concept of organ donation and the apparent failure of the current system to convert potential donors to actual donors. We have used this information to guide us in promulgating the final rule.

II. Notice of Proposed Rulemaking

On December 19, 1997, a proposed rule, "Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval" [HCFA–3745–P] was published in the **Federal Register** [62 FR 66726]. The proposed rule extensively revised the current conditions of participation for hospitals. Among the proposed changes were provisions designed to increase the number of organs available for transplantation.

The proposed rule was developed in response to issues raised during public hearings held by the Department on December 11 through 13, 1996, to examine the allocation policies for liver transplantation and to receive comments regarding methods to increase organ donation. The comments we received at the public hearings highlighted that there is a critical shortage of organs available for transplantation and some of the options available to alleviate the shortage.

Every day an estimated 10 individuals in the United States die because organs are not available to save their lives. This fact gave particular urgency to publication of a final rule covering the provisions of the proposed rule designed to increase donation and transplantation. Therefore, we have extracted those provisions from the proposed rule and are publishing them here, with some modifications, as a final rule. We will be publishing other provisions of the proposed rule as a final rule at a later date.

III. Analysis of and Responses to Public Comments

We received a total of 150 comments on these provisions from hospitals, OPOs, tissue and eye banks, professional organizations, transplant organizations, medical practitioners, donor family organizations, and other organizations and individuals. A summary of the major issues and our responses follow:

Impact on Tissue and Eye Donation

Comment: Several commenters said the regulation should not require that hospitals contact OPOs exclusively about potential donors, including potential tissue and eye donors. Commenters voiced concern that calls about potential tissue donors would not be handled by the OPOs satisfactorily.

Response: The proposed rule did not include a requirement that all calls be referred exclusively to an OPO. However, the final rule does include a requirement that all deaths must be referred to the OPO or a third party designated by the OPO, using protocols developed by the OPO. In the absence of separate arrangements between the hospital and a tissue bank and an eye bank, the OPO will identify and refer potential tissue and eye donors using protocols developed in consultation with the tissue bank and eye bank. The final rule also authorizes a hospital to notify a tissue or eye bank directly about potential tissue or eye donors. We believe these requirements will assure that the interests of the tissue and eye banks are considered and will encourage all parties to reach a consensus that will honor the hospital's need for a referral process that is not burdensome for hospital staff.

Comment: One commenter stated that the proposed rule does not address ways to effectively ensure OPO and hospital cooperation with the eye and tissue banks in their communities. Many commenters questioned why the OPOs should be the "gatekeepers" for all donations and predicted this would adversely impact tissue and eye donations. One commenter suggested all language referring to tissues or eyes be removed from the text of the regulation, so that the rule applies only to organ donation. The commenter expressed the belief that expecting OPOs to serve as the focal point for both organ and tissue donation places too great a burden on OPOs.

Response: In promulgating a rule designed to increase organ donation, we wish to avoid the possibility that the rule will have an adverse impact on tissue and eye donation and retrieval. In the proposed rule, we stated our expectation that hospitals, OPOs, eye and tissue banks would work cooperatively and effectively to facilitate and enhance organ, tissue, and eye donation. However, we noted the considerable local variation in arrangements and how they might be modified under the proposed changes. We specifically requested comments on

how the proposed rule might impact tissue donation and suggestions for measures we can take to maximize donation of organs, tissues, and eyes.

We received many comments from tissue and eye banks, their professional organizations, and individuals active in this area. Some of these commenters stated that in communities where the relationship among the hospitals, OPOs, and the tissue and eye banks is collaborative in nature, the system works well. Many described communities where a single, toll-free telephone number has been established for hospitals to call for referrals of potential organ, tissue, and eye donors. The entity taking the call (whether the OPO or, in some cases, a commercial entity under contract) screens the calls and refers them appropriately and expeditiously. However, other commenters described communities where some hospitals have never referred a single potential donor and where the relationship between the OPO and the tissue and eye banks is acrimonious and antagonistic.

The final rule preserves the flexibility of hospitals, tissue banks, and eye banks to enter into arrangements that do not involve the OPO. However, the final rule makes OPOs the default "gatekeepers" for referral of potential tissue and eye donors in the absence of other arrangements. Therefore, we have included in the final rule a requirement that the OPO consult with the tissue and eye bank(s) in establishing protocols for the identification and referral of potential tissue and eye donors. We have also added language to ensure that hospitals work cooperatively with a tissue bank and an eye bank, as well as the OPO, in educating hospital staff, reviewing death records, and maintaining potential donors. We will be monitoring the progress of the cooperative relationships envisioned by this rule to ensure that the gatekeeper role described does not harm tissue and eye donation.

Comment: Many commenters suggested expanding the regulation so that tissues and eyes are included. One commenter pointed out that there is a critical shortage of tissues for transplant in the United States. For example, patients who await a long bone allograft for treatment of cancer must often wait months for a transplant or resort to amputation. Several commenters said that only 8 percent of needed tissue is currently obtained. Other commenters added that we should include in the final regulation definitions for tissues and eyes.

Response: We agree there is a critical need for tissues and corneas as well as solid organs. We have, therefore, modified the text of this regulation to ensure that tissue and eye banks participate in the local decision-making process. We believe that the addition of these references will increase donations for tissues and eyes as well as solid organs. The procurement and transplantation of tissues and eyes, however, is not regulated by HCFA; therefore, we are not including definitions of these terms in the final rule. The regulation requires OPOs to consult with the designated tissue and eye bank in defining tissue and eye donor and we will rely upon the OPOs, tissue banks, and eye banks to define tissues and eyes as well.

Comment: Some commenters suggested that the rule discourage excessive fees charged by OPOs for referral of tissue donations to tissue and eye banks. Some commenters said that some OPOs may begin referring their donor calls to the highest cost reimburser, with eye and tissue banks forced to try to outbid each other for tissues. One commenter was concerned about donor family and public perceptions that might negatively affect willingness to donate. Other commenters expressed concern that high referral fees would put eye banks out of business.

Response: Our policies defining reimbursement for OPOs extend only to those activities in which the OPO engages on behalf of an eligible Medicare or Medicaid beneficiary, and are limited to reasonable costs. Therefore, any expenses incurred by an OPO, or any charges which may be made to payers other than HCFA, will not be addressed here. We have, however, expressly preserved hospitals' rights to enter into agreements with tissue and eye banks so long as those arrangements do not interfere with an OPO's efforts to recover solid organs. We would anticipate that tissue and eye banks that encounter fees they consider excessive would have the opportunity to address this issue during the establishment of donor and referral protocols.

Comment: One commenter stated we should clarify that our intent is not to disrupt existing contracts between hospitals and tissue banks.

Response: It is certainly not our intent to disrupt contracts between hospitals and tissue banks or hospitals and eye banks. We believe the regulation's requirement which authorizes agreements between the hospital and a tissue bank and an eye bank and its emphasis on collaboration among hospitals, OPOs, and tissue and eye banks will increase tissue and eye donation without disrupting contracts.

Referral Systems

Comment: Some commenters expressed concern that the proposed rule would mean elimination of current, successful community systems for referral of organ, tissue, and eye donors.

Response: Our intent in promulgating this rule is certainly not to disturb successful community referral systems, and we would urge hospitals and OPOs not to abandon them. Therefore, we have revised the rule to clarify that it does not preclude such systems. The final rule permits the hospital to refer potential donors to a third party designated by the OPO and to continue successful arrangements with tissue banks and eye banks. In addition, we encourage OPOs and hospitals, in consultation with tissue and eye banks, to use this opportunity to improve upon current referral systems to maximize not only organ donation but tissue and eye donation as well.

Comment: Many commenters suggested a system whereby all referral calls go to a single non-proprietary answering service or a referral system operated by one of the organ or tissue agencies and supported by all. They pointed out that the process is more successful when hospitals are required to make a single phone call, rather than contacting multiple agencies about a potential donor. One commenter added that hospitals and grieving families should not be burdened with two distinct but parallel operating communications regarding donations. One large, nationwide tissue bank suggested that all referrals be made either to the OPO or a non-proprietary service. One eye bank commented that eye banks in areas with a non-proprietary phone number experience an increase in donations. In contrast, another tissue bank suggested a two-call system which is used in its State. In this State, hospitals are required to contact the OPO on all brain deaths. All other deaths are reported to a referral agency, based on a plan agreed to by the hospital and all other agencies.

Response: Before responding to the comment, we want to clarify that this rule requires hospitals to notify OPOs or a third party designated by the OPO, of individuals whose death is imminent of who have died in the hospital. Some commenters make reference to "brain death" donors, meaning heart beating donors who have been declared brain dead. This regulation does not exclude the reporting of non-heartbeating deaths. Hospitals must report both brain dead and cadaveric potential donors.

We have added language to the text of the regulation to clarify that referral of phone calls to a third party entity designated by the OPO is not precluded. Anecdotal evidence indicates that a one-phone-call referral process may increase organ donations, as well as tissue and eye donations. Logically, it would seem that a system that makes it possible for a hospital to refer potential donors with a single phone call would make hospital compliance easier and, therefore, more likely. We would urge communities to explore this option.

However, regardless of how the referral by the hospital is accomplished, we would also urge that protocols ensure that families of potential donors are approached about donation by a single agency (either the OPO, a tissue bank, or an eye bank) in collaboration with hospital staff. For example, Florida donation legislation provides that the OPO must be given the opportunity to approach the families of suitable vascular organ donors. OPOs may represent the tissue and eye bank. Under the Florida law, the tissue bank must be given the opportunity to approach the family of suitable tissue donors if the OPO has not already approached the family. Eye banks must be given the opportunity to approach the family of suitable eye donors if the OPO or a tissue bank has not already approached the family.

Comment: Several commenters suggested we strengthen the regulation by adopting a routine referral approach which requires referral of all patient deaths to OPOs. Commenters pointed to the success of the Pennsylvania routine referral law and predicted similar increases in donation rates if a nationwide routine referral approach were to be adopted. Commenters gave the following reasons for supporting routine referral: (1) A clear standard is established for hospitals regarding when referrals must be made to the OPO; (2) allows early intervention by the OPO to guide the organ and tissue process to ensure a successful outcome; (3) ensures that the hospital will not erroneously assume that a potential donor is too old or has a medical condition that precludes donation; (4) removes from hospitals the burden of keeping abreast of changing standards for donor screening and suitability criteria; (5) minimizes regional differences in organ procurement and transplant waiting times, and (6) facilitates compliance by hospital systems whose member hospitals are served by more than one OPO. However, many commenters who supported routine referral suggested some flexibility be built into the regulation in consideration of resource limitations or local circumstances. For example, commenters suggested that deaths of individuals above a certain age be excluded from routine referral.

Response: We agree with the commenters who support routine referral of all deaths and have adopted their recommendation in this regulation. We believe that the experiences of States with routine referral legislation have demonstrated that referral of all deaths is the single most critical factor in increasing organ donation rates. Referral of all deaths assures that determination of medical suitability is made by the OPOs, because OPOs are the entities with knowledge of transplant hospitals' donor suitability criteria.

However, we have not adopted the recommendations of those who advised us to give OPOs the discretion to exclude certain categories of deaths from the requirement for routine referral. Referral of all deaths, with no exclusions, eliminates the need for OPOs and hospitals to rewrite referral protocols and reeducate hospital staff whenever transplant hospitals' donor suitability criteria change. It is also less difficult for HCFA to monitor hospital compliance if there are no exclusions. Finally, it is important to note that many OPOs will be screening donors for tissue and eye donation, and tissue and eye banks often have criteria for donation that differ significantly from the criteria for organ donation. For example, in 1997, only 6.4 percent of organ donors were over the age of 65. The Eye Bank Association of America reports however, that more than 28 percent of all eye donors in 1997 were over the age of 70.

Comment: Some commenters urged us not to adopt a routine referral approach. Commenters stated that routine referral will not work where relationships between OPOs and hospitals are, at best, uncooperative. Other commenters cited the burden and cost to hospitals and OPOs of making or receiving many unproductive calls.

Response: We believe routine referral is workable and will increase organ donation. We hope that all OPOs and hospitals will be encouraged by this regulation to develop relationships that increase organ and tissue donation. If they are not able to develop such relationships, however, a hospital may choose to seek waiver to associate with another OPO, or the original OPO may find itself unable to meet HCFA certification standards and be replaced by an OPO better able to develop the kind of relationships that lead to greater organ and tissue recovery.

A 1988 commentary published in the *Journal of the American Medical Association* states that the cooperation of the medical professions is the primary factor limiting the supply of transplantable organs. The author suggests that routine referral "would not solve all the problems of professional cooperation, but it would ameliorate a key one and open the bottleneck that presently constrains the supply of organs." [Prottas, J. "Shifting Responsibilities in Organ Procurement: A Plan for Routine Referral." *Journal of the American Medical Association.* 1988;260:6]

We do not expect the cost to hospitals of referring all deaths to be significant. As discussed in the Regulatory Impact Statement, the average hospital should require no more than four person days per year to report every death that occurs in the hospital to the OPO. This time is in lieu of time hospitals' spend complying with existing requirements. If tissue and eye referrals are made by the hospital to either the OPO or a third party entity, rather than to tissue and eye banks, calls made to tissue and eye banks about medically unsuitable donors should not increase, as the calls will be screened by the OPO or third party entity. However, we expect that OPOs will find that the increased number of donations resulting from routine referral will enable them to meet the additional expenses without a significant increase to their current standard organ acquisition costs. Further information about the expected economic impact of routine referral on OPOs can be found in the Regulatory Impact Analysis.

Best Practices

Comment: Some commenters suggested that HCFA is abdicating its policy-making and regulatory authority to the OPOs. The commenters urged us to identify the best practices by which organ donation can be increased and use those practices as the basis for a regulatory definition of potential donor. The commenters pointed out that the proposed rule indicates that approximately 12,000 to 15,000 of the one million patients who die in hospitals annually are likely to be potential organ donors but that the proposed rule does not establish criteria by which hospitals would be required to identify those patients.

Response: We have not specifically defined potential donor in the final rule because the definition is continually changing, particularly as to the upper age. Instead, we have included the requirement that hospitals routinely refer all deaths and all individuals for

whom death is imminent to the OPO, with the assumption that this requirement will, in most communities, lead to better identification of the medical suitability of the potential donor based on the most recent medical research in transplantation. Contrary to the commenter's statement that one million patients die annually in hospitals, it is estimated that there are approximately 2,080,000 hospital deaths per year. The final rule also requires that the hospital and OPO collaborate in advising the family of potential donors of their option to donate. We have chosen not to dictate best practices for other aspects of organ donation, such as education and death records review, as we believe that each hospital and OPO, working together, can identify practices that will be most useful in their specific situation.

Following is a synopsis of the most recent research in organ donation and best practices for organ donation. We encourage hospitals and OPOs to use these studies and the many other studies that have been done on best practices for organ donation to guide their development of protocols that will work to increase organ donation in their communities. The estimate of 12,000 to 15,000 potential organ donors annually is based on the results of retrospective reviews of 1,990 medical records in 69 acute care hospitals in 4 geographic regions in the United States and a stratified random sample of 89 hospitals in 3 of the same areas (33 of the same hospitals) in 1993. The study found that only one third of the potential organ donors became organ donors. By extrapolating the 1990 findings to the entire United States, researchers postulated a pool of 13,700 medically suitable donors per year. [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall," *Critical Care Medicine* (1996); 24:432–39]

The study also showed that potential donors were correctly identified 90 percent of the time, and families were advised of their donation options only 71 percent of the time. The study's authors concluded that prospective identification and requesting donation in all suitable potential donor cases could lead to 1,800 additional donors per year.

An earlier study based on 1988 and 1989 data estimated the pool of potential organ donors to be between 6900 and 10,700 annually. [Evans RW, Orians CE, Ascher NL. "The Potential Supply of Organ Donors: An Assessment of the Efficiency of Organ Procurement Efforts in the United States," *Journal of the American Medical Association* (1992); 267:239–246.] The study was based on a review of multiple cause of death data from death certificates. The researchers excluded non-traumatic causes of death and, therefore, may have underestimated the potential donor pool by as much as 50 percent. However, the study demonstrated that there are many more potential than actual donors. The study's authors concluded that it may be possible to increase the number of actual donors by 80 percent.

These studies and several other recent studies are defining the best practices for increasing organ donation. As research continues in the field of organ donation, best practices will continue to evolve. Therefore, we are hesitant to use current best practices as the sole basis for promulgating a regulation that cannot be changed quickly enough to keep pace with the results of future research in the field of organ donation. However, we firmly believe there has been sufficient research upon which OPOs and hospitals can develop protocols that will lead to a significant increase in organ donation rates.

Through this final rule and related activities in the National Organ and Tissue Donation Initiative, we are encouraging hospitals and OPOs to incorporate other best practices into protocols for increasing donation rates. For example, recent studies have indicated that organ donation rates can be increased using a variety of best practices related to (1) advising families of potential donors of their rights regarding donation; (2) medical record reviews for evaluating performance and identifying opportunities for education; and (3) education of hospital staff.

The study cited above [Gortmaker SL, Beasley CL, et al. "Organ donor potential and performance: Size and nature of the organ donor shortfall," *Critical Care Medicine* (1996); 24:432–39] found that approximately half of the families asked to donate a relative's organs decline to give consent. Likewise, a stratified random sample of 23 acute-care general hospitals in two metropolitan areas found that only 46.5 percent of families of potential organ donors agreed to donate organs, and 22 percent of those who agreed to donate placed conditions on the donation. [Siminoff LA, Arnold RM, Caplan, AL, Virnig BA, Seltzer DL. "Public Policy Governing Organ and Tissue Procurement in the United States." *Annals of Internal Medicine*. 1995; 123:10–17] The study's authors concluded that "problems with the ways in which families are asked about donation rather than the failure of . . . altruism, may account for the high refusal rate."

An interview study of donor and nondonor families [DeJong W, Franz HG. "Requesting Organ Donation: An Interview Study of Donor and Nondonor Families," *American Journal of Critical Care* (1998);7: 13–23] identified the factors identified with consent for organ donation. The study cites unpublished data [Gortmaker SL, Beasley CL, Sheehy E, et al] that demonstrate a significant increase in the consent rate when three elements are in place when the family is advised of its right to consent to or to decline donation. First, family members must be given time to understand and accept their relative's death before the donation request is made. This means that the hospital staff's notification of the family about the patient's death and the explanation of brain death must be "decoupled" from the request for donation. An earlier study of the consent process also found the timing of the request to be critical. The study indicated a 60 percent consent rate when the subject of organ donation was discussed with the family before notification of death, a 68 percent consent rate when organ donation was discussed simultaneously with notification of death, and a 78 percent consent rate when organ donation was discussed after notification of death. [Cutler JA, et al. "Increasing the Availability of Cadaveric Organs for Transplantation: Maximizing the Consent Rate," *Transplantation* (1993); 56(1)225–28]

Second, consent rates are higher when the request is made by the OPO in conjunction with the hospital staff. A retrospective review of all medically suitable potential donors referred to a single OPO in a one-year period found a 67 percent consent rate when the OPO coordinator approached the family alone, a 9 percent consent rate when the hospital staff approached the family alone, and a 75 percent consent rate when the approach was made by the OPO coordinator and hospital staff together. [Klieger J, Nelson K, Davis R, er al. Analysis of Factors Influencing Organ Donation Consent Rates. *Journal of Transplant Coordination* (1994); 4:132–34] A 1995 article [Dejong, W, Drachman, et al. "Options for Increasing Organ Donation: The Potential Role of Financial Incentives, Standardized Hospital Procedures, and Public Education to Promote Family Discussion," *The Milbank Quarterly* (1995);73: 463–79] suggested that the donation option should first be mentioned to the family by a hospital-based health professional, but the

formal request should be made by the OPO coordinator.

The third critical element in the consent process is the setting in which the request for donation is made to the family. The request should be made in a quiet, private setting, such as a conference room or family meeting room, rather than in a hallway or waiting room. When all of these methods are used in conjunction, consent rates are 47 percent higher than when none of these methods is used.

The study's authors note that in general there is currently no widely accepted protocol with regard to the process for requesting donation. They suggest that hospitals' protocols should include (1) communicating often and honestly with the family about the patient's prognosis, (2) making sure the family understands brain death, (3) decoupling the request for donation from the explanation of brain death, (4) using a quiet, private setting for discussion of donation options, and (5) defining clear roles and responsibilities for the hospital staff and the OPO coordinator.

Another recent study [McNamara P, Franz HG, Fowler RA, et al. "Medical Record Review as a Measure of the Effectiveness of Organ Procurement Practices in the Hospital," *Joint Commission Journal on Quality Improvement* (1997);23:321–33] makes several recommendations for quality improvement initiatives based on medical records review. The study's authors suggest that OPO staff provide feedback from medical records review to key hospital staff concerning practice improvements. They suggest hospitals use information from medical records review to assess the hospitals' performance in the organ donation process, identify areas where performance can be improved, and monitor the effectiveness of the implemented changes. They also suggest that medical records review should be conducted annually at large hospitals.

As referenced earlier, research in education of hospital critical care staff [Evanisko MJ, Beasley, CL, Brigham, LE. "Readiness of Critical Care Physicians and Nurses to Handle Requests for Organ Donation," *American Journal of Critical Care* (1998); 7:4–12] found that training of critical care physicians and nurses in effective procedures for requesting organ donation is significantly associated with higher rates of organ donation. However, two thirds of critical care staff reported no relevant training. A 1986 United Network for Organ Sharing survey found a surprising lack of knowledge among the transplant hospital staff regarding knowledge of organ donation and transplantation. [Ettner BJ, Youngstein KP, Ames JE. "Professional Attitudes and Knowledge About Organ Donation and Organ Transplantation," *Dialysis and Transplantation*, (1988); 17:72–76] Eighteen percent of the respondents were physicians, and 68 percent were nurses. Thirty-four percent of the respondents were unsure if their hospital had written protocols for organ recovery, and nearly half of the respondents answered no to the statement that the organ donor protocols provided adequate guidelines and protection for the donor and for hospital staff. The final rule ensures that only OPO representatives or trained individuals will approach families to explain their donation options and make the actual request for donation.

Our review of these and other studies has convinced us that there has been sufficient research upon which OPOs and hospitals can base protocols that will take advantage of best practices for advising families of their right to consent to or to decline donation, evaluate hospital and OPO staff performance through medical records reviews, and educate hospital staff.

Necessity for Change

Comment: Several commenters suggested that we make no change in the hospital conditions of participation for organ procurement responsibilities. They pointed out that the current regulations, which allow hospitals to establish their own organ donation policies, often result in good donation rates. They suggested that in lieu of a regulation, HCFA continue to evaluate what works to increase donation rates and encourage hospitals and others to make changes.

Response: The current hospital conditions of participation have not produced the results which were anticipated. Therefore, in our response to the previous comment, we outlined research studies that show several approaches that work to increase donation rates. We believe that all hospitals, including those that are currently successful, should consider whether these approaches, in addition to routine referral, could further increase organ donation. A study of 1,990 death records from 69 hospitals in four geographic regions found a wide variation in hospital performance with a hospital donation rate (i.e., actual donors as a percentage of potential donors) ranging from 0 percent to 68 percent. Note that this was not a random sample of hospitals; the hospitals tended to be larger institutions with either a history of donor activity or suspected potential for donation. The average organ donor potential in the hospitals was 13.3; average actual organ donors were 4.3. [Sheehy E, Poretsky A, Gortmaker, SL. "Relationship of Hospital Characteristics to Organ Donation Performance," *Transplantation Proceedings* (1996); 28:139–141]

These data demonstrate that, some hospitals need more than encouragement to meet the requirements of section 1138 of the Act, which mandates that hospitals identify potential organ donors and assure that families of organ donors are informed of their donation options. In view of the critical and growing shortage of donated organs in this country, we would be abdicating our responsibility as a Federal agency if our only response to this crisis were merely to be encouragement. We believe that a less burdensome approach for hospitals, requiring only a phone call to the OPO, will be more successful in providing opportunities for families to consider donation. Therefore, we are not accepting this comment.

Comment: One commenter suggested a delay in publishing the final rule until the Department can convene a workshop to come up with a different proposal. The same commenter also suggested allowing hospitals at least three years to develop an action plan to increase donation rates.

Response: We believe the need to substantially increase organ donation immediately outweighs any potential benefits from adopting the commenter's suggestion. As noted above, 10 people die every day waiting for an organ transplant. In addition, the Department sought public comments on the issue of increasing organ donation as part of its development of a related rule regarding the Organ Procurement and Transplantation Network, including a three-day public hearing in December 1996. It also conducted a conference in April 1998 to identify methods to evaluate and identify successful mechanisms to increase donating consent. In view of the every-widening gap between the number of people waiting for organ transplants and the number of organs available, further delay in passing a regulation to alleviate this crisis is unacceptable.

Regulatory Flexibility

Comment: Many commenters warned against promulgating a final regulation that is too prescriptive. They emphasized that what is needed, above all, is flexibility to design protocols to meet needs of local communities, rather than a "one-size-fits-all" regulation

which defines potential donor and the protocols for notification and referral for the entire country. One commenter pointed out that such flexibility allows for look-back data and new research to be incorporated into hospitals' policies.

Response: We agree with these commenters and have used this viewpoint to guide our development of the final rule. For example, it allows the OPO to determine medical suitability in light of the most recent transplantation research and the needs of transplant recipients, surgeons, and hospitals. The final rule requires collaboration between the hospital and the OPO in informing families of potential donors of their donation options because the evidence is overwhelming that involvement of the OPO in the consent process is critical. We believe however, it is best for hospitals and OPOs to have the flexibility to design a protocol for informing families that takes into account circumstances in each community. Finally, the final rule allows hospitals, OPOs, and tissue and eye banks the flexibility to adapt best practices in the areas of death record reviews and education of hospital staff to suit the circumstances in their local communities.

Medical Suitability

Comment: One commenter suggested there should be Federal baseline criteria for defining potential donors, with HCFA setting minimum standards, including tests, required for an individual to donate an organ. Hospitals and OPOs could be more exacting, but could not fall below the Federal standard. Another commenter called for a national conference to determine the broadest possible definition based on national need and the varying acceptance criteria of transplant surgeons and institutions. For example, commenters suggested variously that "potential donor" should be defined as a patient who is brain dead and heart beating or any patient on a ventilator.

Response: We believe these commenters are seeking a Federal definition for medically suitable donors, rather than a Federal definition for potential donors. Generally, a definition for potential donors is designed to cast a wide net by defining potential donors, for example, as all hospital deaths or all patients on ventilators. By making the pool of potential donors so large, OPOs ensure that no medically suitable donors are missed. However, many, if not most, of the potential donors in this large pool will not be medically suitable to be actual donors.

We are reluctant to impose a Federal standard for medically suitable donors. Some OPOs, for example, the Louisiana Organ Procurement Agency, have experimented with expanded criteria for determining medically suitable donors, with good results. However, transplant hospitals vary in their willingness and ability to transplant organs from potential donors with particular medical conditions or from donors who are past a certain age. At one time, most organ donors were age 45 or younger; now some transplant hospitals are transplanting livers from 80-year-old donors. According to the Organ Procurement and Transplantation Network contractor, the 33 percent increase in cadaveric donors between 1988 and 1996 is primarily due to the increase in donors ages 50 and over. Cadaveric donors age 50 and over increased from 12 percent in 1988 of all cadaveric donors to 27 percent in 1996. [*United Network for Organ Sharing 1997 Scientific Registry and Organ Procurement and Transplantation Network Annual Report*] Some transplant hospitals will consider organs from donors with any medical condition other than metastatic cancer or HIV; other transplant hospitals are more restrictive.

It is likely that as transplantation research continues, the ability of medical professionals to obtain and transplant organs from patients once considered medically unsuitable will grow. Therefore, since the definition of medically suitable donor will likely be broadened in the future, we believe it would be inappropriate to impose a regulatory definition.

Comment: One commenter stated that in order to determine if a potential donor is medically suitable to be a donor, it may be necessary for the OPO to examine the body, conduct tests, review medical records, and obtain medical information from the family and physician. The commenter said that hospitals have expressed concern that this violates laws governing patient privacy and confidentiality of medical records and asked us to emphasize that the authority to do so is implicit in the law.

Response: We agree with the commenter that the OPO may examine the body of the potential donor and his or her medical records and conduct the tests, inquiries, and investigations that are necessary to determine if the potential donor would be medically suitable to be a donor. The Public Health Service Act section 371, 42 U.S.C. 274 specifies that OPOs must arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the OPTN under section 372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome. Section 371 of the Act also specifies that OPOs must arrange for the appropriate tissue typing of donated organs. Certainly, after receipt of consent for donation from the potential donor's family, it would be necessary for the OPO to examine the body of the potential donor, conduct tests, review medical records, and obtain medical information from the family and physician in order to accomplish the requirements of section 371 of the Act. Therefore, after receipt of consent, we believe the authority to conduct testing, review medical records, and gather other medical information needed to determine the medical suitability of the potential donor is implicit in the law.

OPO Conditions of Coverage

Comment: Some commenters had suggestions for changes in the OPO procedural standards in the regulations governing OPOs, such as requiring OPOs to refer potential tissue donors to eye banks and/or tissue banks.

Response: We are not making changes to the OPO conditions of coverage here, as the OPO conditions of coverage are not within the purview of this regulation. However, we will retain the comments for reference and continue to review the OPO requirements with a view toward improving their effectiveness. In addition, we would point out that the OPO conditions of coverage do require OPOs to "have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors." [42 CFR 486.306(l)] Because this final rule does establish OPOs as the default gatekeepers for referral of tissues and eyes, we will regard very seriously the failure of any OPO to refer promptly all potential tissue and eye donors to the tissue and eye bank(s) specified by the hospital.

Comment: One commenter cited "anecdotal evidence" that managed care organizations, hospitals, and other providers are reluctant to provide services for patients with non-survivable brain injuries. The commenter recommended changing HCFA reimbursement rules for OPOs to allow costs related to donor clinical assessment prior to declaration of death. The commenter suggested this would eliminate a barrier to OPOs' early

involvement with the potential donor and address hospital concerns regarding donation-related charges incurred prior to brain death.

Response: Although reimbursement is not within the scope of this regulation, HCFA will be looking into this matter with a view to determining what steps appropriately can be taken to ensure that providers' difficulties in obtaining reimbursement for services to patients with non-survivable brain injuries does not become a barrier to organ donation.

Comment: A few commenters responded to our request for suggestions about how to design or implement the most cost-effective outcome standard for OPOs related to organ recovery. The commenters called for a more precise way to measure potential donors for comparison with actual donors so that each OPO is evaluated in light of its true potential. Some commenters said that if HCFA adopts an outcome standard based on conversion of potential to actual donors, the current performance standards should be reviewed with a view to changing or eliminating them.

Response: We agree that the current method of using population to define potential donors may not reflect regional differences in number and cause of deaths. A recent GAO report [U.S. General Accounting Office, "Alternatives Being Developed to More Accurately Assess Performance (GAO/HEHs–98–26)," (November 1997)] noted that unless OPO performance is measured according to the number of potential donors, HCFA cannot determine OPOs' effectiveness in acquiring organs. We agree with the conclusions of the GAO report and will be evaluating two methods suggested by the GAO for more accurately identifying the number of potential donors in an OPO's service area: death record review and modeling. We also will be evaluating the results of the study of death record reviews being conducted by the Association of Organ Procurement Organizations in conjunction with the American Congress for Organ Recovery and Donation (ACORD) and a methodology for estimating potential donors, which is being developed by Harvard Medical School, the Harvard School of Public Health, and the Partnership for Organ Donation. If the current method of using population to estimate the number of potential donors in an OPO's service area is changed, we will review all OPO conditions of coverage to determine their appropriateness in view of that change.

Comment: One commenter suggested hospitals should be allowed to set minimum credentials for OPO personnel working in their hospitals. The commenter said surveys of donor family satisfaction and satisfaction of hospital personnel with OPO personnel should be permitted, and hospitals should have the option of terminating their contract with the OPO if a workable solution is not found.

Response: There is nothing in the regulation that precludes a hospital from surveying donor families or hospital personnel to determine their level of satisfaction with the OPO. However, standards for OPO personnel are a HCFA responsibility. [42 CFR 486.306] A hospital dissatisfied with its designated OPO has the option of requesting a waiver from HCFA permitting an agreement with an OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to HCFA showing that the waiver is expected to increase organ donations and will ensure equitable treatment of patients referred for transplants within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement.

Resolution of Disputes

Comment: Several commenters suggested there should be a mechanism for "due process" if there are disagreements between OPOs and hospitals or between OPOs and tissue and eye banks. One commenter suggested that the rule should require an agreement as to the content of the protocols signed by both the OPO and the hospital. The commenter suggested that the Department should set up a system for mediating and, if necessary, arbitrating disputes. In the case of arbitration, the decision of the Secretary would be final.

Response: We have tried to structure a final rule that will encourage hospitals and OPOs to work together to alleviate the critical shortage of organs for transplant. We have included a requirement that hospitals and OPOs work "collaboratively" in advising families of potential donors of their donation options. We have included a requirement that hospitals work "cooperatively" with OPOs and tissue and eye banks in reviewing death records, educating hospital staff about donation issues, and maintaining potential donors. We have included a requirement that the OPO consult with a tissue and an eye bank in developing protocols for identification and referral of tissues and eyes. We believe these requirements will obviate the need for dispute resolution mechanisms, such as mediation or arbitration. However, based on the correspondence we have received, we understand that, in some communities, relationships between hospitals and OPOs and between OPOs and tissue and eye banks are contentious and that collaboration may prove to be difficult.

We know that hospitals, OPOs, and tissue and eye banks share our view that organs and tissues are a precious national resource and that only through the collaborative efforts of all parties can lives be saved. As one commenter wrote, "at risk in * * * this issue are patient lives that could either be saved or be unnecessarily lost by the success—or failure—of hospitals and OPOs working together."

We will monitor donation rates and OPO and hospital performance after this rule becomes effective. In those instances where tensions among the actors in the donation process are hindering improvements in organ donation, we will explore ways in which we might play a constructive role in encouraging and facilitating a successful local solution.

Family Consent to Donation

Comment: One commenter expressed concern that strengthening the role of the OPOs in the donation process will encourage OPOs to apply too much pressure on bereaved families in order to meet HCFA performance standards. The commenter suggested the final rule should address the need for sensitivity toward families and their religious views and the need for education of hospital staff in sensitivity to families' grief. Another commenter cited OPO "quotas" and hospitals' concerns about lack of control as reasons why the OPO should not be involved with the potential donor's family until the family has agreed to donation or requested additional information about donation.

Response: We have no evidence that families of potential donors are being pressured by OPO or hospital staff and no reason to believe that this change in the hospital conditions of participation would lead to such a problem. We note however, that the final rule requires collaboration between the hospital and OPO in informing families of potential donors of their donation options and also requires hospitals to encourage discretion and sensitivity with respect to the circumstances, views and beliefs of families of potential donors. In addition, the final rule both permits the hospital to choose the individual who will initiate the request for donation to the family and ensures that the

individual initiating the request has been educated in the consent process.

Although our earlier references to research on the family consent process emphasize that best practices lead to improved consent rates, such improvement is achieved in large part through greater sensitivity to families and their beliefs, their backgrounds, and their grief. For example, the interview study cited earlier [DeJong W, Franz HG. "Requesting Organ Donation: An Interview Study of Donor and Nondonor Families," *American Journal of Critical Care* (1998);7:13–23] discusses family demographic characteristics, such as race, ethnicity, and education and concludes, "This information should be used to remind the health care team to be especially attentive to concerns that certain families might have and to take special care to meet the families' informational and emotional needs. Healthcare providers should approach the family with the belief that a donation is possible and should take steps to ensure the family is treated with respect and care."

The services provided by Nebraska Health Systems are an example of what hospitals and OPOs can do to increase family consent to donation while providing emotional support and counseling to grieving families. This transplantation facility offers a program called Acute Bereavement Services, staffed by organ recovery personnel, nurse resource coordinators, and pastoral care staff. These individuals are available at any time to guide discussions with survivors concerning potential organ and tissue donation; act as a resource for family questions about funeral arrangements, coroner notification, autopsy consent, grief resources, hospital leave-taking, religious resources, and ritual; act as a resource for staff questions about notification of organ recovery staff; and act as advocates for the immediate grief needs of survivors. Nebraska Health Systems instituted their Acute Bereavement Services because "we wanted to have a positive impact on the grieving process even after our medical responsibilities to the patient and family ended." In 1996, the Nebraska Health Systems family consent rate was 75 percent. Hospitals interested in obtaining more information about Acute Bereavement Services can contact Nebraska Health Systems at Box 984075, 600 South 42nd St., Omaha, NE 68198–4075, Attention: Marsha Morien.

Comment: Some commenters voiced concern about the use of the word "discretion" in the text of the regulation. The regulation requires that hospitals "encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors." Commenters suggested there is a risk that in some circumstances the term "discretion" might be used as a justification to avoid advising eligible families about organ donation because of a presumption on the part of hospital staff that the family would not be receptive because of their intense grief, socioeconomic status, race, or religion. The commenter cited a study that found minority families, particularly African Americans, were less likely to be asked about the option of donation. The commenter suggested this might be due to hospital staff perception that ethnic minorities are opposed to donation, despite ample evidence that minorities donate in significant numbers. One OPO commented that the greatest impediment to donation is a hospital's conclusion that consent cannot be obtained. The OPO stated, "In such a situation, the OPO has lost a potential donor without ever being afforded the opportunity to act."

Response: Our use of the term "discretion" in the text of the regulation reflects the statute's use of that term in section 1138(a)(1)(A)(ii) of the Act. However, we are grateful for an opportunity to point out that our use of the term "discretion" in the text of the regulation should not be construed to mean that hospital staff should, under any circumstances, make a judgment that certain families should not be approached about donation. The hospital staff's perception that a family's grief, race, ethnicity, religion, or socioeconomic background would prove a barrier to donation should never be used as a reason not to approach the family. We cannot emphasize too strongly that all families of potential donors must be advised about their donation options.

Comment: Many commenters strongly supported our language regarding notification of donor families. Many mentioned the research that shows that highest family consent rates are obtained when OPOs and hospitals collaborate. One OPO reported an 87 percent consent rate when OPO staff and hospital staff collaborate in the request to the family and a 38 percent consent rate when the hospital staff approach the family alone. Some commenters emphasized that hospital staff should be free to continue to participate in advising families of their donation options. However, one commenter suggested that if hospital staff consent rates differ markedly from OPO staff consent rates, the hospital should be required to return consent responsibility to the OPO or provide training to hospital staff. Some commenters recommended that the regulation specify that only trained personnel (whether OPO or hospital staff) are permitted to advise families of potential donors of their donation options. One commenter pointed out that in Pennsylvania, which has a routine referral law, hospital personnel can become designated requestors only after undergoing training by the OPO.

Response: We appreciate the commenters' support for the final rule's emphasis on collaboration in notifying families of potential donors of their options for donation. Research has shown best practices include participation of both OPO personnel and hospital staff in the process, with the actual request for donation made by OPO personnel. We encourage hospitals and OPOs to consider these best practices when determining how this process will occur. We agree with the commenters who suggested that only personnel trained in the consent process be permitted to approach families with a request for donation, and we have included that provision in the final regulation. We have also modified the text of the regulation to make it clear that hospitals have discretion in determining who will initiate the request for donation.

Comment: Some commenters suggested further strengthening the rule by giving the OPOs even more control over the process. For example, one commenter suggested the rule be strengthened to give OPOs the sole responsibility for initiation of the request for organs or tissues. The commenter mentioned that currently OPOs are being held accountable by the Federal government but have not been given the tools to increase donation rates. Several commenters urged us to eliminate the requirement for collaboration between the OPOs and the hospital in the consent process and make it clear that only OPO staff should be permitted to approach the family about donation.

Response: We are sympathetic to the commenters' point of view. OPOs have been in the difficult position of having to meet specific performance standards for organs donated and transplanted, while at the same time having less than total control over the donation and transplantation processes. However, we disagree that only OPOs should be permitted to advise families of potential donors of their donation options. As stated elsewhere in this preamble, studies show that the highest family consent rates are a result of collaboration between OPOs and

hospitals. The participation of hospital staff is critical both to ensure that a family understands and accepts the brain death of the potential donor and to provide compassionate support to the family. A 1987 study of donor family perspectives concluded that the hospital nursing staff are in the best position to have a positive effect on donor families' attitudes toward their donation experiences and, ultimately, as families share their experiences with family and friends, in the future availability of organs for transplant. [Bartucci, MR. "Organ Donation: A Study of the Donor Family Perspective." *Journal of Neuroscience Nursing.* 1987; 19:305–309] The final rule gives OPOs considerably more control over the donation process while at the same time encouraging collaborative relationships between OPOs and hospitals.

Death Record Reviews

Comment: Many commenters strongly supported the requirement for death record reviews. One commenter, a hospital association from a State with a routine referral law, suggested that death record reviews be performed only by licensed OPOs. Another commenter encouraged us to take the next step by providing support and resources to allow compilation of medical records review data in a centralized database, and by accelerating the development and application of methods to accurately estimate underlying donor potential in hospitals and OPOs.

Response: We agree that death record reviews are an essential component of this final rule. We expect that requiring hospitals to cooperate with OPOs, tissue banks and eye banks in reviewing death records will allow the OPOs, tissue banks and eye banks the opportunity to review death records to determine donor potential, monitor hospital compliance, and identify areas where education in a hospital's organ donation procedures is needed. The final rule will permit the hospital, OPO, tissue bank, and eye bank to determine who will perform the death record reviews. Providing resources for compilation of medical records review data is beyond the scope of this regulation. However, we are interested in a further exploration of how such a database could be useful in increasing organ donation. We are currently considering various methods for estimating donor potential and are also awaiting the outcome of a review of hospital death records being conducted by the Association of Organ Procurement Organizations in conjunction with the ACORD.

Comment: A few commenters were concerned that giving outside agencies access to death records would be disruptive or would jeopardize patient confidentiality.

Response: In requiring hospitals to work cooperatively with OPOs, tissue, and eye banks in performing death record reviews, we are confident that a system can be worked out among all parties to minimize disruptions. Likewise, we would expect that all parties can come to an agreement on the protocols that will be used both to perform death record reviews and analyses. We also expect all parties involved to use the resulting data in a manner that ensures patient confidentiality is not threatened. Note that both hospital and OPO regulations require hospitals and OPOs to have procedures for ensuring the confidentiality of patient records. Hospitals and OPOs must ensure that unauthorized individuals cannot gain access to or alter patient records. Hospitals and OPOs must also ensure that original medical records are released only in accordance with Federal or State laws, court orders, or subpoenas. [See 42 CFR 482.24(b)(3) and 42 CFR 486.306(o).] We believe that sufficient safeguards exist in Federal and State law to protect the confidentiality of hospital death records.

Comment: One commenter asked that HCFA provide explicit authority for OPOs to conduct audits of hospital organ and tissue donation performance to be provided upon request to HCFA or the Joint Commission on Accreditation of Health Care Organizations. Confidentiality would be assured as a condition of OPO designation.

Response: Although this regulation does not give OPOs specific authority to conduct death record reviews, it does require that hospitals work cooperatively with their OPOs in reviewing death records. This means that a hospital must develop a protocol which permits the OPO access to death record information that will allow the OPO to assess the hospital's donor potential, assure that all deaths or imminent deaths are being referred to the OPO in a timely manner, and identify areas where both OPO and hospital staff performance might be improved.

General Comments

Comment: One commenter cited "concerns in the medical community" about the broad language of the proposed rule and the possibility that unintended and unanticipated actions could be taken. The commenter suggested that we hold meetings with interested parties to assess their understanding of the language and request suggestions for clarifying the proposed rule.

Response: We carefully considered all comments we received from hospital and medical associations; tissue and eye banks and their professional organizations; transplant and donor organizations; OPOs; and other organizations and individuals. In addition, we have tried to be quite specific in this preamble in our discussions of the meaning of the regulation text and in our suggestions for implementation.

Comment: Some hospital associations expressed concern that OPOs would establish policies that are unworkable because the proposed rule provides no guidance to OPOs about the policies they should establish. The hospital associations gave as an example, the proposed requirement that the hospital assure that the family of each potential donor knows of its option to donate or decline to donate organs or tissues. They suggested that if an OPO defined potential organ donor as any patient who dies, the hospital would be required to inform the families of all deceased patients of their donation options even if it knew the patients were not medically suitable to be donors.

Response: We believe the final rule's emphasis on cooperation and collaboration between hospitals and OPOs will ensure protocols are developed and implemented that will function efficiently for both hospitals and OPOs. In addition, since OPOs must meet regulatory performance standards, it certainly is in their best interests to establish policies that are workable.

Comment: One commenter stated that the key to success of protocols for defining and referring donors will be ensuring that the burden on hospitals to carry out the protocols is not unduly heavy. The commenter suggested there should be some latitude in local protocols but that all protocols should strive to meet three criteria: (1) Ensuring that no medically suitable potential organ donor is missed; (2) minimizing the number of non-eligible cases that are referred; and (3) ensuring referral well before discontinuation of ventilation and cardiac arrest. Others echoed the third criterion in asking us to clarify that, whenever possible, referrals should be made when death is imminent to ensure that brain-dead or near brain-dead patients are maintained until a referral is made and are not referred to the OPO after mechanical support has been discontinued.

Response: We agree with the commenters' first and third criteria and believe the final rule will achieve these goals. OPOs are the entities familiar with the parameters for transplantable organs used by transplant hospitals and surgeons. Routine referral coupled with the OPO's determination of medical suitability increases the likelihood that no medically suitable potential donors are missed.

The requirement for timely referral at death or when death is imminent means that hospitals must make referrals both before a potential donor is removed from ventilator and while the potential donor's organs are still viable. Timely referral also means that the hospital must notify the OPO about potential donors early enough in the process to allow sufficient time for the family of the potential donor to make an informed decision about donation. We added these requirements to the final rule to minimize the possibility that organs will be lost to medical complications. One recent study noted that without aggressive support, cardiac arrest occurs in 20 percent of potential donors within 6 hours after the declaration of brain death and in 50 percent of donors within 24 hours. The authors conclude that delays in referrals may reduce the availability of organs since hemodynamic instability and cardiac arrest can develop relatively soon after brain death and emphasize that early identification and intervention are crucial for the successful recovery of organs. [Hauptman PJ, O'Connor KJ. "Medical Progress: Procurement and Allocation of Solid Organs for Transplantation," *New England Journal of Medicine;* 336:422–431]

With respect to the commenters' second suggested criterion, we would prefer also to minimize the referrals of potential donors later determined not to be medically suitable. We believe such an approach is implicit in our current regulation which permits hospitals to develop protocols for potential donors and refer only those cases to OPOs. However, as discussed previously, this approach has resulted in a significant percentage of potential donors not being identified.

Comment: Some commenters suggested we include provisions and funding for public education, which could be a cooperative effort by the OPOs and hospitals. One commenter questioned the need for any of the provisions in the proposed rule and implied the best way to increase the donation rate is to educate the public.

Response: We agree with the commenters that public education about organ donation is important and a variety of efforts have been and will be needed to enhance public awareness of the benefits of organ donation. The Department of Health and Human Services launched the National Organ and Tissue Donation Initiative with dozens of partners in December 1997. One of the three goals of the initiative is to build public awareness about the essential role of families in consenting to donation. The initiative features the Coalition on Donation's message, "Organ and Tissue Donation: Share your life. Share your decision" to underscore the need for family discussion about donation. The Department also has a new site on the Internet at http://www.organdonor.gov to provide up-to-date information to the public about organ and tissue donation and transplantation.

However, we do not believe we should rely exclusively on that as a strategy to increase donation. If hospitals do not identify potential donors, if families of potential donors are not asked to donate, or if those families are asked in a way that is unlikely to lead to their consent for donation, then public support for organ donation is immaterial.

Comment: Several commenters suggested we expand the definition of organ to include small bowel or intestine.

Response: We will not expand the definition of organ at this time. Before moving forward, we will need to assess fully the policy considerations of expanding the definition of organ to include small bowel or intestine. However, we will retain these comments with a view toward consideration of expanding the definition of organ in a future regulation.

Comment: A rural hospital suggested we take into account rural frontier areas when finalizing the regulation. They pointed out that their closest tertiary facility is 300 miles away. Another commenter recommended an exemption from the regulation for hospitals without potential donors, such as those facilities that lack ventilator support capabilities, do not have ICUs and do not provide trauma, neurology or neurosurgery services.

Response: We do not intend to establish exemptions for particular types of hospitals at this time. We do not believe routine referral will be burdensome to these small hospitals, and we believe that the information provided to the OPOs through the referral calls made by these hospitals may prove to be useful for organ, tissue, or eye donation.

Comment: A commenter pointed out that studies have shown that transplant hospitals as a group are no more effective in organ donation than non-transplant hospitals. The commenter recommended an extra level of donation accountability for transplant hospitals.

Response: We believe the requirements contained in the final rule will maximize the number of transplantable organs yielded by every hospital, making it unnecessary to have a different level of accountability for transplant hospitals. We agree that transplant hospitals should be especially active in identifying potential donors. However, we intend to hold all hospitals to the same level of accountability, that is, to use their best efforts to respond to the critical organ shortage.

Comment: Three commenters described proposed regulations or existing laws in their States that require hospitals to develop their own protocols for organ donation. The commenters expressed concern that the proposed rule is in conflict with those State laws because it would remove a hospital's authority under State law to determine a potential donor's medical suitability.

Response: We do not believe the final rule is in conflict with the spirit of the State legislation described by the commenters, which appears to have been written for the purpose of increasing organ donation. We note that in the 1980s, 44 States and the District of Columbia passed legislation designed to increase organ donation by requiring hospitals to develop protocols for identifying potential organ donors and informing families of their option to donate, and it is clear from the research on potential donors that have not been identified by hospitals that the laws have been inadequate. In response, States have begun to pass routine referral laws. We would also point out that the Federal regulation would supersede both State law and State regulations to the extent that it presents otherwise irreconcilable conflicts with State policies.

Comment: One commenter had several questions related to how various issues should be handled in cases where two or more OPOs are operating in the same area, such as whether hospitals would be responsible for two or more sets of criteria from these OPOs.

Response: The regulations at 42 CFR Part 486, Conditions for Coverage for Organ Procurement Organizations, specifically § 486.316, states that HCFA designates only one OPO per service area. A hospital must enter into an agreement only with the OPO designated to serve the area in which

the hospital is located unless HCFA has granted the hospital a waiver. Thus, a hospital would never be permitted nor required to have an agreement with more than one OPO at a time.

Hospitals' Provision of Transplant Data and Hospital Accountability

Comment: Several commenters urged us not to add outcome standards to the regulation because they would be too prescriptive. One commenter suggested individual hospitals should decide whether they need to monitor their outcomes.

Response: This regulation does not include numerical organ donation goals for hospitals.

Comment: An OPO pointed out that a hospital cannot (except with HHS approval) choose its OPO and is at the mercy of how well the OPO performs. The commenter suggested that to ensure hospitals' cooperation and to ensure they are not evaluated on the basis of their OPOs' performance, a provision be added to the final rule that states a hospital has met its obligations under section 1138 of the Act if it has entered into an agreement with an OPO designated by HCFA, the OPO certifies that the hospital has complied with the agreement and protocols, and the hospital has authorized the OPO to determine medical suitability and to make requests for donation.

Response: We see no need to include this specific language in the regulation. However, we would agree that if a hospital has met the requirements in the regulation, then it is likely the hospital has met its obligations under section 1138 of the Act, regardless of whether the OPO's performance has been satisfactory or unsatisfactory. Meeting the requirements of the regulation include, but are not limited to, referring all deaths to the OPO and ensuring that the family of every potential donor determined by the OPO to be medically suitable for donation has been advised of its donation options by an OPO representative or a designated requestor.

Comment: One commenter suggested oversight of the hospitals' actual participation in the process, which could be assured through death record reviews, audit results, or other record keeping to demonstrate the hospitals' level of compliance. The commenter added that this should be enforced by Medicare surveyors, and a second commenter urged us to discuss our plans for educating surveyors to ensure that hospitals will work assiduously to meet organ donor identification, referral and other related requirements. Another commenter suggested that hospitals be required to maintain records of a quality improvement process that supports its protocols. One commenter stated that they would support the inclusion of an assessment of organ donation procedures as part of a hospital's overall quality assessment and performance improvement process. The commenter added that such a provision would establish a hospital's accountability for actions it can control. Some commenters recommended including performance standards for hospitals to measure the variance between the number of potential donors, referrals, and actual donations. The commenters added that OPOs should participate in developing performance indicators based on documented best practices.

Response: Surveyors and HCFA regional offices will oversee compliance with the requirements of this regulation. However, surveyor procedures are beyond the scope of this regulation. The proposed rule for the hospital conditions of participation does not propose a specific set of quality indicators or objective performance measures be used. Instead, each hospital would be allowed flexibility to identify its own measures of performance for the activities it identifies as priorities in its quality assessment and performance improvement strategy. We recommend that every hospital make organ donation one of its priorities for quality assessment and performance improvement. Death record reviews are a powerful tool hospitals can use in their quality assessment and performance improvement strategies. In addition, we strongly recommend that OPOs perform death record reviews and advise hospitals of any failure to identify or refer potential donors or to advise families of potential donors of their donation options.

Comment: Many commenters suggested that the proposed rule must be strengthened to hold hospitals accountable if they do not cooperate with OPOs. Several commenters stated that the language of the proposed rule falls short of requiring hospital staff to cooperate with the OPO. One commenter suggested that we strengthen the language related to termination of participation in Medicare and Medicaid if a hospital does not cooperate. Another commenter added, "We do not see how these proposed regulations will make a hospital with a "lukewarm" interest in donation become more actively involved in the process."

Response: We believe the language of the final rule is unequivocal in requiring a hospital to refer all deaths to the OPO or a third party designated by the OPO, collaborate with the OPO in assuring that families of potential donors are advised of their donation options, and cooperate with the OPO and tissue and eye banks in reviewing death records and educating hospital staff in donation issues. This regulation is part of the conditions for hospital participation in the Medicare and Medicaid programs. Therefore, a hospital will jeopardize its Medicare and Medicaid certification should it fail to meet the requirements listed in the regulation.

Hospital Transplant Data

Comment: We received many comments about the requirement in the proposed rule for transplant hospitals to provide transplant-related data. Several commenters pointed out that the text of the proposed rule specifies that the data must be provided to the Organ Procurement and Transplantation Network, the Scientific Registry, the OPOs, and the Department of Health and Human Services, whereas the preamble language specifies that the data must be provided to the Organ Procurement and Transplantation Network, the Scientific Registry, the OPOs, or the Department of Health and Human Services. Commenters added that requiring hospitals to report data to all entities would be duplicative, burdensome, and would increase administrative costs.

Response: The information provided in the preamble was correct. The text of the final rule has been changed to state that the data must be provided as requested to the OPTN, the Scientific Registry, or the OPOs. The hospital must also provide data directly to the Department when requested by the Secretary. However, our intent is not to require hospitals routinely to report identical data to more than one entity, but rather to authorize direct requests by each of these entities.

Comment: Several commenters asked whether the intent of this provision is to require hospitals to provide tissue transplant data as well as organ transplant data. They pointed out that approximately 500,000 tissue transplants are performed annually in the U.S., and providing tissue transplant data would be a significant burden for hospitals.

Response: This requirement applies only to organ transplant data. The text of the regulation has been changed to clarify that hospitals must provide organ-transplant-related data.

Comment: Many commenters pointed out that the proposed rule was too vague regarding the type of data hospitals would be required to provide and how often they would be required to provide it. Commenters asked for reassurance that data requests will be reasonable.

One commenter suggested that we specify what data will be requested and allow time for meaningful comment. The commenter added, "In the absence of this specificity, the claim on page 66754 of the **Federal Register** that these requirements are usual and customary in the conduct of hospital business are without foundation." Another commenter asked that we specify the branch of the Department that will receive the data.

Response: At this time, we have not determined the type of organ transplant data that may be requested by the Department. We included this provision to give the Department the flexibility to request data from transplant hospitals in the event that needed data cannot be obtained expeditiously from the OPOs, the OPTN, or the Scientific Registry. Data may be needed by HCFA, the Health Resources and Services Administration (HRSA), or the Office of the Secretary, but, under this regulation, data could be requested by any agency within the Department. Note that a similar provision regarding the mandatory reporting of data by transplant hospitals also is contained in a related regulation. [See final rule with comment period, Organ Procurement and Transplantation Network [98–HRSA–01, 63 FR 16295] published April 2, 1998, effective October 1, 1998.] In accordance with 42 CFR 121.11(a)(2)(record maintenance requirements for OPOs and transplant programs) and 121.11(b)(2) (reporting requirements for OPOs and transplant hospitals) these programs are required to maintain and report to the OPTN, the Scientific Registry, and the Secretary data concerning, among other things, each potential donor identified. Therefore, the requirement in this (HCFA) rule, when considered with the requirements in the OPTN rule, will enable the Department to obtain information routinely from all transplant hospitals and OPOs in support of donation programs under this authority.

Comment: Several commenters expressed concern about the confidentiality of the data and pointed out the extremely sensitive nature of transplant patient data. One commenter stressed that because the patient population is relatively small, it is difficult to protect patient confidentiality, even when patient identifiers are removed from the data.

Response: HCFA's primary intent is to use requested data internally to assess whether a transplant hospital is qualified to participate (or continue to participate) in the Medicare program and monitor organ donation. We agree that the confidentiality of donor and transplant recipient records must be protected and are confident that Federal and State laws provide adequate safeguards. No additional specific provisions to protect confidentiality are required in this regulation.

Comment: One commenter suggested that the public have access to all data provided by the transplant hospitals. However, several commenters warned that release of data without proper analysis and verification can result in dissemination of inaccurate or misleading information. One commenter noted that release of such data may harm individuals or have a negative impact on organ donation.

Response: Section 121.11(b)(1)(v) of the recent OPTN regulation [98–HRSA–01, 63 FR 16295] requires the OPTN and the Scientific Registry to provide data which is to be used for *bona fide* research or analysis purposes, to the extent that resources permit, or as directed by the Secretary. Section 121.11(b)(1)(vi) requires the OPTN and the Scientific Registry to provide data to the public. Section 121.11(b)(2) requires that hospitals and OPOs provide data directly to the Department upon request and that they may not impose restrictions on subsequent redisclosure. The Secretary has requested comments on whether the provisions "sufficiently achieve the several important purposes served by providing information to the OPTN, the Department, and the public, while protecting patient privacy."

Another related provision § 121.11, "Public access to data" provides that the Secretary may release to the public information that will serve the public interest. This information would include data on comparative costs and outcomes at different transplant programs, information on waiting list time, and information on the frequency with which transplant hospitals refuse offers of organs for their listed patients. The preamble to the OPTN regulation notes that release of this data is consistent with section 375 of the Public Health Service Act, 42 U.S.C. 274c, which directs the Department to provide information to patients, their families, and their physicians about transplantation resources and about the comparative costs and patient outcomes at each transplant hospital affiliated with the OPTN.

IV. Provisions of the Final Rule

We are adding § 482.45 in regulations to add the new requirements concerning organ procurement organizations and transplant hospitals. The final rule strengthens the role of OPOs in the donation process, encourages the use of best practices, and provides a framework for better collaboration among organizations involved in organ, tissue, and eye donation with the goal of making transplants more readily available to the many patients who need them. We are confident these revisions to the current hospital conditions of participation will narrow the gap between the number of deaths of patients on the waiting list and the number of organs available for transplant.

The final rule will enable hospitals and OPOs to take advantage of the most recent research in organ donation by using protocols that have proved successful for referring potential donors, obtaining family consent for donation, educating OPO and hospital staff, and reviewing death records. We have written the provisions of this final rule to enable hospitals and OPOs to take advantage of these best practices in order to increase organ donation rates nationwide.

In view of the research that has been done in the field of organ donation, the demonstrated increase in organ donation rates in States that have passed routine referral laws, and the comments we have received, we believe that routine referral of all deaths is the most effective way to increase organ donation rates substantially.

However, the final rule does not mandate how best practices are to be applied at the local level. It is designed to maximize organ donation while allowing local communities a certain amount of flexibility in applying the rule to their local situation. The rule takes this approach in order to encourage innovation at the local level and to assure that successful alternative approaches are not disrupted. For example, although the final rule specifies that the individual requesting donation from the family of a potential donor must be trained in the family consent process, it allows the hospital to decide whether that individual will be an OPO representative, a tissue bank or eye bank representative, or a hospital employee and encourages OPOs and hospitals to collaborate in defining how the process will occur [§ 482.45(a)(3)].

There are a number of sources of information and guidance about the most recent research in organ donation for OPOs and hospitals that want to ensure their protocols reflect best practices. One of these is The Partnership for Organ Donation, Inc., Two Oliver St., Boston, MA 02109–4901. The Partnership is an independent, nonprofit organization that sponsors research in organ donation and has worked with hospitals and

OPOs across the United States to improve organ donation.

The current regulations require the governing board of a hospital to have a written protocol to identify potential organ donors and carry out the other requirements of section 1138 of the Act. We have revised how these requirements are articulated, in keeping with the way in which we are generally transforming these conditions of participation for hospitals. The final rule requires that the hospital actually carry out specified responsibilities. For example, the hospital must contact the OPO or its designee about every death or imminent death that occurs in the hospital. This requirement will relieve the hospital of the responsibility for keeping current with changing potential donor criteria and determining the medical suitability of potential organ donors (unless the hospital has an alternative arrangement with its tissue and eye banks in which the hospital determines the medical suitability of tissue and eye donors) and will ensure that no potential donors are missed.

The Commonwealth of Pennsylvania passed legislation effective in March 1995, requiring that hospitals report all deaths to the OPO. The OPO for southeastern Pennsylvania, Delaware and southern New Jersey (Delaware Valley Transplant Program) has seen a 40 percent increase in organ donation since enactment of the law. In contrast, since 1990, the organ donation rate nationwide has increased an average of less than 3 percent per year and, as noted above, remained essentially unchanged in 1997. Other OPOs that have instituted routine referral within some hospitals in their service areas have seen similar, substantial increases in those hospitals. One OPO reported that two of their hospitals had their first organ donors in 1997, yielding five organs for transplantation. Another OPO that uses routine referral has seen their consent rate for organ donation among African Americans rise from 32.7 percent in 1991 to 68.9 percent in 1997.

The final rule specifies that the hospital must ensure, in collaboration with the OPO, that the family of each medically suitable potential donor identified by the OPO is advised of the right to donate or decline to donate. This provision is based on research that indicates that consent to organ donation is highest when the formal request is made by OPO staff or by OPO and hospital staff together rather than by hospital staff alone. While we require collaboration, we also recognize that hospital staff may wish to perform this function and may do so when properly trained. Under this final rule, the hospital may choose to have OPO staff contact potential donor families, have hospital and OPO staff jointly perform this function, or rely exclusively on hospital staff. If hospital staff, rather than organ procurement coordinators, initiate the request for donation to the family, it is important that they be trained in best practices for advising the family of their options and initiating the request for donation. Therefore, the rule requires that hospital staff who initiate the request for donation must be designated requestors. A designated requestor is defined in the regulation as an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology of approaching potential donor families and requesting organ or tissue donation. The Pennsylvania routine referral legislation also requires that hospital employees complete a course in how to approach families and explain their donation options.

One recent study demonstrated a 47 percent increase in consent rates when best practices are used. [Gortmaker SL, Beasley CL, Sheey E, et al, unpublished data] Another recent study demonstrated that training of hospital staff about protocols for organ donation is significantly associated with superior rates of organ donation. However, the study also demonstrated that current levels of training about organ donation are inadequate. [Evanisko MJ, Beasley, CL, Brigham, LE "Readiness of Critical Care Physicians and Nurses to Handle Requests for Organ Donation." *American Journal of Critical Care* (1998; 7:4–12]

The final rule requires a hospital to ensure that it works cooperatively with the OPO, a tissue bank, and an eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors during necessary testing and placement of donated organs and tissues [§ 482.45(a)(5)]. Review of death records is the key method an OPO uses to determine a hospital's donor potential. It allows the hospital to develop strategies for improving donation and allocating resources to educate hospital staff. Review of death records also enables hospitals to recognize missed opportunities for organ donation and to identify hospital, OPO, and recovery staff who may need additional education.

The final rule mandates that a hospital have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes [§ 482.45(a)(2)]. This agreement can be used to spell out whether the OPO will determine medical suitability for tissue and eye donation and handle the referral process for tissue and eye donors or whether an alternative referral process will be used. If the OPO determines medical suitability and refers tissue and eye donors, it must do so using the definition of potential tissue and eye donor and a notification protocol developed in consultation with the tissue bank and eye bank designated by the hospital. An alternative arrangement might, for example, specify that the hospital will refer potential tissue and eye donors directly to the tissue bank and eye bank. We added these requirements in the final rule to ensure that tissue and eye banks have potential tissue and eye donors referred to them appropriately and expeditiously. It is important to note when discussing agreements between hospitals, tissue banks and eye banks, that some OPOs are also tissue and/or eye banks. This regulation does not preclude a hospital from having a single agreement with such an OPO which encompasses the services the OPO will provide in regard to organs, tissues, and eyes, in lieu of separate agreements with an OPO, a tissue bank, and an eye bank.

The final rule stresses cooperation and collaboration between all parties. It is our expectation that in communities where hospitals, OPOs, and tissue and eye banks have not yet developed cooperative relationships, these requirements will encourage all parties to work together with the best interests of their communities in mind to establish protocols that will increase organ, tissue, and eye donation rates.

The final rule requires transplant centers to provide requested organ-transplant-related data to the OPTN, the Scientific Registry, the OPO, or the Department, as requested by the Secretary [§ 482.45(b)(3)]. Currently, transplant centers report data to the OPTN, the OPO, and the Scientific Registry regarding the disposition of organs made available for transplant. These data include information regarding why a center declines the offer of a donated organ, information regarding patients waiting for transplants, information on those who have received a transplant, follow-up data on patients who have received a transplant, and information on those offered an organ for transplant but declining to use the organ at the time. At the time the proposed rule was published, submission of these data by transplant centers to the OPTN was voluntary.

However, a final rule with comment period, Organ Procurement and Transplantation Network [98–HRSA–01, 63 F.R. 16295, published April 2, 1998, effective October 1, 1998] has made reporting by transplant centers mandatory. In accordance with 42 CFR 121.11(a)(2) (record maintenance requirements for OPOs and transplant programs) and 121.11(b)(2) (reporting requirements for OPOs and transplant hospitals) these programs are required to maintain and report data to the OPTN, the Scientific Registry, and the Secretary. Therefore, the requirement in this HCFA final rule, when considered with the requirements in the OPTN rule, will ensure that data will be available to implement section 1138 of the Act to operate the OPTN and to obtain information from the Scientific Registry, and to provide information to the Secretary, patients, their families, physicians, and the public.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) requires agencies to analyze options for regulatory relief for small entities. Consistent with the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat most hospitals and most other providers, physicians, health care suppliers, carriers, and intermediaries as small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The Unfunded Mandate Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual mandated expenditure by State, local, and tribal governments, in the aggregate, or by both the private sector, of $100 million. The notice has no mandated consequential effect on State, local, tribal governments, or the private sector and will not create an unfunded mandate.

We have determined that this regulation is economically significant under E.O. 12866 and a major rule for purposes of Congressional review of agency rulemaking.

We do not anticipate that the provisions in this final rule will have a substantial economic impact on most hospitals, including small rural hospitals. However, we believe it is desirable to inform the public of our projections of the likely effects of the final rule on hospitals, small rural hospitals, OPOs, tissue banks, and eye banks.

There are several provisions in this regulation that will impact hospitals to a greater or lesser degree. Specifically, hospitals will be required to have written protocols; have agreements with an OPO, a tissue bank, and an eye bank; refer all deaths that occur in the hospital to the OPO; ensure that hospital employees who initiate a request for donation to the family of a potential donor have been trained as "designated requestors"; and work cooperatively with the OPO, tissue bank, and eye bank in educating hospital staff, reviewing death records, and maintaining potential donors. It is important to note that because of the inherent flexibility of this regulation, the extent of the economic impact of most of these requirements is dependent upon decisions which will be made either by the hospital or by the hospital in conjunction with the OPO and/or the tissue and eye banks. Thus, the impact on individual hospitals will vary and is subject in large part to their decision making. The impact will also vary according to each hospital's current organ donation protocols and level of compliance with existing law and regulation. For example, eight States already have routine referral legislation, and in several other States, OPOs and hospitals have routine referral agreements.

The first requirement in the regulation is that hospitals have and implement written protocols that reflect the various provisions of the regulation. Currently, under section 1138 of the Act and the existing regulation, hospitals must have written protocols for organ donation. Most hospitals will need to rewrite their existing protocols to conform with this regulation; however, this is clearly not a requirement that imposes a significant economic burden.

In addition, a hospital must have an agreement with its designated OPO and with at least one tissue bank and at least one eye bank. Although the current regulation does not specifically require an agreement with an OPO, hospitals are required under section 1138 of the Act and the existing regulation to refer all potential donors to an OPO. Also, the OPO regulation at 42 CFR 486.306 requires, as a qualification for designation as an OPO, that the OPO have a "working relationship" with at least 75 percent of the hospitals in its service area that participate in the Medicare and Medicaid programs and that have an operating room and the equipment and personnel for retrieving organs. Therefore, presumably most hospitals already have some type of agreement with their designated OPO. Although hospitals may need to modify those existing agreements, the need to make modifications would not impose a significant economic burden. The current regulation does not require hospitals to have agreements with tissue and eye banks. However, we must assume most hospitals have agreements with tissue and eye banks, since hospitals are the source for virtually all tissues and eyes.

The provision of the regulation that will have the most impact on hospitals is the requirement to notify the OPO about every death that occurs in the hospital. Approximately 400 deaths per year occur in the average hospital in the U.S. If the average notification telephone call to the OPO takes five minutes, the hospital will need approximately four person days per year to make the calls. We believe this is a generous estimate. One OPO has reported that the referral calls hospitals make to the vendor that handles their referral calls average one minute, 20 seconds. An OPO in a State with routine referral estimates the calls they receive from hospitals, on average, last no more than three to five minutes. (A call about a ventilator dependent patient might last an hour, but, of course, these calls are infrequent.)

Most likely, additional time would be needed by the hospital staff person to annotate the patient record or fill out a form regarding the disposition of the call. This paperwork should take no more than five minutes. Therefore, paperwork associated with the call might add approximately four person days per year.

In summary, the impact of referring all deaths to the OPO should be limited to approximately eight person days per year. Thus, the economic impact for a hospital of referring all deaths will be small. Although small rural hospitals have fewer staff than the average hospital, there are also fewer deaths to report. Therefore, the impact on small rural hospitals of notifying OPOs of all deaths would be commensurately small.

Under the regulation, a hospital may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the hospital's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a hospital chose to contact both a tissue bank and an eye bank directly on all deaths, it would need a total of 16 person days per year (i.e., five minutes per call (four person days) and five minutes for paperwork (four person days) in order to call both the tissue and eye bank directly). Again, the impact is small, and the regulation permits the hospital to decide how this process will take place. Note that many communities already have a one-phone-call system in place, and this regulation does not preclude, and in fact encourages, these local systems. Also, some OPOs are also tissue banks and/or eye banks. A hospital that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

This regulation requires that the individual who initiates a request for donation to the family of a potential donor must be an OPO representative or a "designated requestor." A designated requestor is an individual who has taken a course offered or approved by the OPO in the methodology for approaching families of potential donors and requesting donation. It is difficult to estimate how much hospital staff time will be needed for designated requestor training, as it is dependent both upon the length of the course and the number of employees the hospital wishes to have trained. An OPO in a State with similar legislation has a one-day training course for its designated requestors. The Partnership for Organ Donation, an independent, nonprofit organization that sponsors research in organ donation and work with hospitals and OPOs to improve organ donation, offers intensive two-day training for hospital donation teams. Even if the OPO requires a two-day training course and the hospital wants to have a sufficient number of designated requestors to ensure that all shifts are covered, this provision of the regulation would not have a significant economic impact on hospitals. In addition, the hospital may choose to have donation requests initiated by the OPO staff rather than hospital staff, in which case there is no economic impact.

The regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in educating hospital staff. We do not believe education of hospital staff will demand a significant amount of staff time. For example, the Pacific Northwest Transplant Bank recently worked with the Oregon Health Sciences University to educate all 400 nurses and all staff physicians, chaplains, social workers, and medical interpreters. The OPO transplant coordinator gave a 15-minute presentation highlighting staff responsibilities and changes in the hospital protocol, with an emphasis on a more sensitive family approach. Presentations were given at times convenient for the staff, such as at regular staff meetings and before and after shift reports. Clearly, such brief educational presentations, even if given once a year or more often, would not have a significant impact on hospitals. Also, most OPOs currently have educational programs for their hospitals. For example, one OPO has one full-time and eight part-time staff devoted to hospital staff training for the hospitals in their service area.

The regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in reviewing death records. Most OPOs currently conduct extensive hospital death record reviews. The hospital's assistance is required only to provide lists of hospital deaths and facilitate access to records.

Finally, the regulation requires a hospital to work cooperatively with the OPO, a tissue bank, and an eye bank in maintaining potential donors while necessary testing and placement of potential donated organs and tissues take place. If this regulation is successful in increasing organ donation, hospitals will have more brain dead potential donors to maintain until family consent is obtained and the donors' organs are removed. As referenced earlier, The OPO for southeastern Pennsylvania, Delaware and southern New Jersey (Delaware Valley Transplant Program) has seen a 40 percent increase in organ donation since enactment of routine referral legislation in Pennsylvania in 1995. In contrast, since 1990, the organ donation rate nationwide has increased an average of less than 3 percent per year. Of course, we must take into account the fact that eight States have some type of routine referral legislation, although most of it is quite recent. Therefore, if we assume that this regulation will result in a more modest increase of 20 percent (10 percent or 548 additional donors per year) in the two years following the effective date, there will be approximately 1,096 additional donors in that two-year period (based on the 5,475 organ donors in 1997). (Note that the goal of the Organ and Tissue Donation Initiative is an increase in the organ donation rate of 20 percent in two years.) However, since there are approximately 5,200 short stay hospitals in the U.S., the additional number of donors per hospital would be quite small.

It is possible that because of the final rule, some small rural hospitals may have their first organ donors. Therefore, we considered the impact on a rural hospital of maintaining a brain dead potential donor on a ventilator until the organs can be placed. Small rural hospitals with full ventilator capability should have no trouble maintaining a potential donor until the organs are placed. However, some small rural hospitals have ventilator capability only so that a patient can be maintained until he or she is transferred to a larger facility for treatment. These hospitals would have the equipment and staffing to maintain a potential donor until transfer to another facility occurs. Many small rural hospitals do not have ventilator capability and would be unable to maintain a potential donor however, small rural hospitals without ventilator capability will still be obligated to notify the OPO, or a third party designated by the OPO, of all individuals whose death is imminent or who have died in the hospital. We do not believe there will be a significant impact on small rural hospitals no matter what their situation—full ventilator capability, ventilator capability only for patients who are to be transferred to a larger facility, or no ventilator capability.

It is important to estimate the costs to OPOs of screening the significant number of additional calls they will receive. There are 63 OPOs that will receive the referral calls generated by the approximately 2,080,000 hospital deaths per year. This means that the average OPO will receive 33,016 referral calls per year (90 referral calls per day). An OPO may choose to hire a third party vendor to triage the phone calls or may hire staff to handle the calls in-house. Currently, some OPOs use a combination of systems, with OPO staff

handling calls received during business hours and a vendor handling calls received during non-business hours. One OPO that uses a vendor pays $1,200 per month for the first 300 calls and $3.20 per call for each additional call. The vendor's staff enters all necessary information into a database that can be accessed by the OPO and also contacts the tissue and eye banks on every call. One vendor that triages calls for a number of OPOs charges $5 to $10 per call, depending upon the type of services desired.

An OPO that chooses to have calls handled by OPO staff will have costs for staff training, additional telephone lines and computers, and computer software upgrades. One OPO in a State with routine referral legislation, has 70 percent of the 32,000 calls it receives every year handled by a vendor and the remainder handled by OPO staff. An OPO representative estimated their start-up costs to be approximately $40,000. The OPO pays the vendor $180,000 per year and spends $220,000 per year on salary and benefits for the additional staff that is needed for routine referral. The OPO has also seen their telephone charges increase by about 50 percent. However, in spite of these costs, the OPO has maintained its organ acquisition costs below the national average. A representative from an OPO in a State that recently passed routine referral legislation called its start-up costs "significant." However, in the seven-month period since the legislation went into effect, the OPO's organ donors have increased by 70 percent (when compared to the nine-month period prior to the legislation), while its organ acquisition cost has risen just 3 percent.

It is clear that set-up costs for OPOs to handle the increased calls resulting from routine referral are significant. They include costs for improving communications and computer systems and hiring and training staff. Likewise, ongoing costs for OPOs of handling the increased calls are significant. The OPO that pays its vendor $1,200 per month for the first 300 calls and $3.20 per call for each additional call would spend approximately $105,280 to screen 32,000 calls per year. An OPO that uses a vendor that charges $10 per call would spend $320,000 per year to screen 32,000 calls. An OPO that uses both a vendor and OPO staff might spend more than $400,000 per year to screen 32,000 calls. However, the critical issue is whether the acquisition cost per organ will increase significantly. The acquisition cost per organ is a function not only of the cost per call, but the number of calls required for each organ, given the system set up by the OPO. Based on the experience of some OPOs in States with routine referral, these costs are likely to remain the same or increase only slightly.

We received many comments about the proposed rule which expressed concern that the regulation would have a negative impact on tissue and eye banks. A few commenters even predicted that some eye banks would be forced out of business. However, the final rule contains safeguards to ensure that OPOs consult with tissue and eye banks in establishing protocols for identifying and referring tissue and eye donors to the tissue banks and eye banks chosen by the hospital. Therefore, we do not believe there will be a significant impact on a substantial number of tissue and eye banks.

We expect that this regulation will increase tissue and eye donations as well as organ donations. A study of the impact of the Pennsylvania routine referral legislation on tissue and eye donations was presented at the Fourth International Society for Organ Sharing Congress and Transplant Congress in July 1997. [Nathan, HM, Abrams, J, Sparkman BA, et al. "Comprehensive State Legislation Increases Organ and Tissue Donations"] This study used data from the Delaware Valley Transplant Program, the OPO for southeastern Pennsylvania, and found that although the maximum donor age was lowered from <66 to <60, tissue donations increased 14 percent from 1994 through 1996. The study also showed that eye donations increased 28 percent during the same period, despite more restrictive donor criteria. This virtually eliminated the waiting list for suitable corneas. North Carolina's routine referral legislation became effective in October 1997. The Carolina Organ Procurement Agency (one of three North Carolina OPOs) has seen heart valve donations increase by 109 percent and other tissue donations increase 114 percent through May 1998.

As discussed earlier, we expect this regulation will result in an additional 1,096 donors in the first two years after it goes into effect. In 1997, there were 3.11 organs transplanted for every organ donor (17,032 cadaveric transplants from 5,475 organ donors). Therefore, an additional 1,096 donors could result in an additional 3,409 transplants, that is, an additional 3,409 lives being improved or saved in the first two years of the regulation.

Transplants are performed both to save lives and to improve the quality of recipients' lives. In the case of kidneys, dialysis is an alternative to transplantation for extended periods of time. Therefore, for most patients, kidney transplantation is not necessary for survival, but it does significantly improve the quality of the transplant recipient's life. Physical health while on dialysis is significantly impaired, and dialysis imposes major stresses and substantial inconveniences in carrying out normal activities. Of the 17,032 transplants from cadaveric donors performed in 1997, slightly more than half (50.4 percent), or 8,584, were kidney transplants.

For all other organs, a transplant is, in most cases, necessary for survival. In the first two years, this regulation will result in approximately 1,718 (50.4 percent of 3,409) lives vastly improved by kidney transplants and 1,691 (49.6 percent of 3,409) lives both vastly improved and prolonged by transplantation of other major organs.

The following reasoning was used to construct a benefit cost analysis in the OPTN regulation. It is common, in benefit cost analysis, to use a concept termed "value of a statistical life" to estimate in monetary terms the benefits from lives saved. Estimates of this value can be derived from information on the preferences of individuals for reduction in the risk of death, and their willingness to pay for such reductions. In this case, however, it is important to take into account two major factors that reduce the usefulness of a statistical life as a measure: (a) most organ transplant recipients are much older than average and hence gain fewer years than would average beneficiaries of other lifesaving interventions, and (b) an organ transplant carries a substantial risk of either the graft or the patient not surviving. For example, according to historical data from the 1997 Annual Report of the OPTN (page 23), only 62 percent of cadaveric kidney grafts survive 5 years, and only 81 percent of these patients survive 5 years (patient survival is substantially higher because dialysis is usually an option if the organ fails). Five year patient survival rates for livers are 72 percent, for hearts 67 percent, and for lungs 43 percent. As each year passes, additional patients die, though at lower rates than in the first year or two. Survival rates have improved in recent years, but the statistical expectation of increased longevity and/or graft survival from a transplant is on the order of a dozen years (a rough estimate since we do not yet know what the long-term experience will become), not the 40 years (half a lifetime) that underlies most estimates of statistical lives. Using the more conservative concept of a "statistical life-year" saved, then, the benefit from 1,691 non-renal transplant recipients

approximates 20,292 life years in the first two years of the regulation.

In a recent rulemaking on tobacco, HHS estimated the value of a statistical life-year at about $116,000 (see **Federal Register** of August 28, 1996, at page 44576). This was a conservative estimate that would reasonably apply to organ procurement and transplantation (though a figure several times as high could equally reasonably be used). Applying the conservative $116,000 value to statistical life-years saved by non-renal organ transplants, the social benefit from 1,687 non-renal transplants is approximately $2,353,872,000 in the first two years of the regulation.

In order to calculate the transplantation costs that will occur because of this regulation, we have used five-year costs, which include follow-up costs. The OPTN regulation uses Milliman and Robertson's estimates for the five-year cost of major organ transplants (adjusted for survival). They are as follows: liver, $394,000; heart, $317,000; lung, $312,000; heart-lung, $351,000; pancreas, $149,000; and kidney $172,000. According to HCFA actuaries, kidney transplantation costs are offset by reductions in other medical costs over time, such as dialysis costs.

In 1997, 24 percent of transplants performed were liver transplants, 13 percent were heart transplants, 5 percent were lung transplants, 6 percent were pancreas transplants, and 1/3 of one percent were heart-lung transplants. Slightly more than half of all major organ transplants in 1997 were kidney transplants. (Figures are approximate.)

Earlier we postulated a 20 percent increase in organ donation in a two-year period, resulting in an additional 1,096 donations and 3,409 organs transplanted in the first two years after the effective date of the legislation. If we assume that all the gains from the regulation occur in the first two years (that is, the number of additional donors remains at 1,096 in every two-year period) or 584 per year, the number of additional donors due to this regulation would stand at approximately 2,740 (5 years X 548 donors per year) in a five-year period, and the number of additional transplants would stand at 8,521.

Using 1997 percentages, we would expect that during the five year period following the effective date of this regulation, there would be an additional 2,045 liver transplants, 1,108 heart transplants, 426 lung transplants, 28 heart-lung transplants, and 511 pancreas transplants. Therefore, the approximate overall five-year cost of the additional non-renal organ transplants would be as follows: liver, $805,730,000; heart, $351,236,000; lung, $132,912,000; heart-lung, $9,828,000 and pancreas, $76,139,000, for a total greater than $1,375,845,000. As stated earlier, kidney transplant costs are offset overtime by reductions in other medical costs, such as kidney dialysis. Therefore, we did not include the costs of kidney transplants in the calculation of the overall five year transplantation costs. Some offsetting reductions in medical costs for other types of transplants are also likely, but are not as readily quantifiable.

We also calculated the statistical and social benefits from the 4,118 non-renal transplants during a five-year period. Using our earlier methodology, the five year statistical and social benefits would be as follows: 49,416 additional life-years and $5,732,256,000 additional social benefit.

Below, provided by HCFA actuaries, are estimated costs to the Medicare program resulting from additional organ transplants.

ESTIMATED COSTS TO THE MEDICARE PROGRAM

Fiscal year	Cost (millions)
1999	35
2000	75
2001	115
2002	160
2003	200
2004	240

These estimates include both the cost of the transplants and follow-up medical care, adjusted for patient survival. Costs increase every year because each year's cost includes transplants performed in that year plus medical care for those transplant recipients who received transplants in previous years. Thus, the impact in each year was calculated as the sum of the number of transplants in that year plus the cost of patient graft survivals. Our analysis indicates that administrative costs to the Medicare budget are minimal.

Cost estimates were adjusted for:

- Normal annual percentage increase in organ donation and transplantation that would occur independent of the impact of this regulation;
- The fact that the Medicare population tends to be sicker than the general transplant population;
- The fact that approximately ⅓ of kidney transplant recipients leave Medicare end stage renal disease (ESRD) rolls after three years if the transplant is successful; and
- Reduced costs to the Medicare program for kidney transplant recipients because they no longer need dialysis.

HCFA actuaries also estimated the cost to the Medicare program of transplants and follow-up medical care for transplant recipients in FY 2004 *without* the regulation to be $1,630,000,000. Total costs to the Medicare program in FY 2004 *with* this regulation total $1,870,000,000 ($1,630,000,000 + $240,000,000). Thus, the regulation will increase the cost to the Medicare program and associated medical care by approximately 15 percent in FY 2004.

Note the cost estimate for 1999 does not include the first three months of FY 1999. Although the regulation's effective date will be in August 1998, it is not expected that there will be an impact on the Medicare budget until January 1, 1999.

We attempted to compare the costs to hospitals and OPOs of the proposed regulation and the final regulation. The proposed regulation would have permitted OPOs to define both "potential donor" and the notification protocol hospitals would use to refer potential donors. We cannot quantify the costs of implementing the proposed regulation because we have no way of knowing with any certainty, what the individual OPOs would decide to do if given the responsibility of deciding which deaths would be referred by their hospitals. Some OPOs might exclude individuals by age; other OPOs might exclude individuals by clinical category (e.g., HIV positive or metastatic cancer). However, even absent a comparison of costs, we believe the final regulation is a more effective mechanism to increasing organ donation. Referring all deaths is a better approach because it creates a clear standard for hospitals to follow, it ensures that hospitals will not erroneously assume that a potential donor should be excluded, it allows early intervention by the OPO to guide the organ and tissue procurement process to ensure a successful outcome, and will make it easier to standardize transplantation waiting time.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and

approval. In order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements summarized and discussed below.

Section 482.45(a) Standard: Organ Procurement Responsibilities

The burden associated with the requirements of this section include; (1) the requirement to maintain protocol documentation demonstrating that the five requirements of this section have been met, (2) the requirement for a hospital to notify an OPO and/or tissue bank of a death, and (3) the time required for a hospital to document and maintain OPO referral information.

We estimate that, on average, the requirement to maintain protocol documentation demonstrating that the requirements of this section have been met will impose one hour of burden per hospital (on 5,200 hospitals) on an annual basis (a total of 5,200 annual burden hours).

The burden associated with the requirement for a hospital to notify an OPO of every death that occurs in the hospital is estimated to be approximately 400 calls per year in an average hospital, multiplied by five minutes per call, for a total annual burden of 34 hours per hospital (a total of 176,800 annual burden hours). We believe this is a generous estimate. One OPO has reported that the referral calls hospitals make to the vendor that handles their referral calls average one minute, 20 seconds. An OPO in a State with routine referral estimates the calls they receive from hospitals, on average, last no more than three to five minutes. (A call about a ventilator dependent patient might last an hour, but, of course, these calls are infrequent.)

In addition, time would be needed by the hospital staff person to annotate the patient record or fill out a form regarding the disposition of the call. The burden associated with this activity is estimated that be five minutes per call, multiplied by 400 calls, for an annual burden of 34 burden hours per hospital (a total of 176,800 annual burden hours).

Under the regulation, a hospital may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the hospital's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a hospital chose to contact both a tissue bank and an eye bank directly on all deaths, it would need an additional 68 annual hours of burden per hospital (a total of 353,600 annual burden hours), (i.e., five minutes per call and five minutes for paperwork in order to call both the tissue and eye bank directly). Again, the impact is presumed to be small, since the regulation permits the hospital to decide how this process will take place. It should be noted that many communities already have a one-phone-call system in place, and this regulation does not preclude, and in fact encourages, these local systems. Also, some OPOs are also tissue banks and/or eye banks. A hospital that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

Section 482.45(b) Standard: Organ Transplantation Responsibilities

If a hospital performs any type of transplants, it must provide organ-transplant-related data as requested by the Organ Procurement and Transplantation Network (OPTN), the Scientific Registry (SR), or the organ procurement organizations (OPOs). The hospital must also provide such data directly to the Department of Health and Human Services when requested by the Secretary.

The new reporting requirement imposed with this section, which is subject to the PRA, is the requirement on an estimated 300 transplant hospitals to provide data to 63 OPOs. Based upon discussions with industry representatives the data that will be requested by the OPO's is data currently requested and supplied by transplant hospitals to the OPOs. Therefore, we are assigning one token-hour for the burden associated with this requirement.

The burden related to the requirement for a hospital to provide data to the OPTN and SR is currently imposed by the Health Resources and Services Administration and is approved under OMB number 0915–0157, with an expiration date of 10/31/99. The burden associated with these requirements ranges from .1 hour to .4 hours per submission, depending on donor type. On an annual basis the total number of submissions is 285,600 for a total burden of 39,970 hours. The remaining requirement that data may be requested by the Secretary, would be collected on an individual basis and/or during the pursuit of an administrative action, audit, or investigation, and is therefore not subject to the requirements of the PRA as defined under 5 CFR 1320.3 (h)(6) and 1320.4.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in *§§ 482.45(a) and 482.45(b)*. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn.: John Burke HCFA–3005–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Allison Herron Eydt, HCFA Desk Officer

List of Subjects in 42 CFR Part 482

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

Subpart B—Administration

§ 482.12 [Amended]

2. In § 482.12, paragraph (c)(5) is removed.

Subpart C—Basic Hospital Functions

3. A new § 482.45 is added to subpart C to read as follows:

§ 482.45 Condition of participation: Organ, tissue, and eye procurement

(a) *Standard: Organ procurement responsibilities.* The hospital must have and implement written protocols that:

(1) Incorporate an agreement with an OPO designated under part 486 of this chapter, under which it must notify, in a timely manner, the OPO or a third party designated by the OPO of individuals whose death is imminent or who have died in the hospital. The OPO determines medical suitability for organ donation and, in the absence of alternative arrangements by the hospital, the OPO determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose;

(2) Incorporate an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage and distribution of tissues and eyes, as may be appropriate to assure that all usable tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement;

(3) Ensure, in collaboration with the designated OPO, that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to decline to donate. The individual designated by the hospital to initiate the request to the family must be an organ procurement representative or a designated requestor. A designated requestor is an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ or tissue donation;

(4) Encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

(5) Ensure that the hospital works cooperatively with the designated OPO, tissue bank and eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place.

(b) *Standard: Organ transplantation responsibilities.* (1) A hospital in which organ transplants are performed must be a member of the Organ Procurement and Transplantation Network (OPTN) established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274) and abide by its rules. The term "rules of the OPTN" means those rules provided for in regulations issued by the Secretary in accordance with section 372 of the PHS Act which are enforceable under 42 CFR 121.10. No hospital is considered to be out of compliance with section 1138(a)(1)(B) of the Act, or with the requirements of this paragraph, unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the hospital from the OPTN and has notified the hospital in writing.

(2) For purposes of these standards, the term "organ" means a human kidney, liver, heart, lung, or pancreas.

(3) If a hospital performs any type of transplants, it must provide organ-transplant-related data, as requested by the OPTN, the Scientific Registry, and the OPOs. The hospital must also provide such data directly to the Department when requested by the Secretary.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance; Program No. 93.778, Medical Assistance Program)

Dated: June 15, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 16, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16490 Filed 6–17–98; 10:12 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 98–117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On June 15, 1998, the Commission released a Notice of Proposed Rule Making and Order. The Commission adopted a number of changes in this proceeding to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications in several services.

EFFECTIVE DATE: July 22, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau (202) 418–2780.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making and Order* (*Order*) in MM Docket No. 98–93 and FCC No. 98–117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Order* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Order

1. The Commission is making a number of amendments to the FM technical rules in order to clarify existing rules. Because these amendments are non-controversial and will have no adverse effect on any party, we find that notice and comment procedures are unnecessary and need not be followed prior to their adoption.

Ordering Clauses

2. *Accordingly, it is ordered,* that these minor rule changes shall become effective July 22, 1998.

List of Subjects

47 CFR Part 73

Radio, reporting and recordkeeping requirements.

47 CFR Part 74

Radio, reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

Accordingly, Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Amend § 73.45 by revising paragraph (c) introductory text and paragraph (c)(2) to read as follows:

§ 73.45 AM antenna systems.

* * * * *

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by

a method described in § 73.51(a)(1) or (d). (If the changes are due to the construction of FM or TV transmitting facilities, see §§ 73.316, 73.685, and 73.1692.) Upon completion of any necessary repairs or adjustments, or upon completion of authorized construction or modifications, the licensee must make a new determination of the antenna resistance using the procedures described in § 73.54. Operating power should then be determined by a direct method as described in § 73.51. Notification of the value of resistance of the antenna system must be filed with the FCC in Washington, DC as follows:

(1) * * *

(2) Whenever AM stations use direct reading power meters pursuant to § 73.51, a letter notification to the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, must be filed in accordance with § 73.54(e).

3. Amend § 73.54 by revising paragraph (d) introductory text to read as follows:

§ 73.54 Antenna resistance and reactance measurements.

* * * * *

(d) A letter of notification must be filed with the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, when determining power by the direct method pursuant to Section 73.51 and must specify the antenna or common point resistance at the operating frequency. The following information must also be kept on file at the station:

* * * * *

4. Amend § 73.58 by revising paragraph (f) to read as follows:

§ 73.58 Indicating instruments.

* * * * *

(f) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, information requested in accordance with § 73.3549 may be filed by letter with the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, to request additional time as may be required to complete repairs of the defective instrument.

5. Amend § 73.68 by revising paragraph (b), the note following paragraph (b) and paragraph (d)(1) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(b) A station having an antenna sampling system constructed according to the specifications given in paragraph (a) of this section may obtain approval of that system by submitting an informal letter request to the FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau. The request for approval, signed by the licensee or authorized representative, must contain sufficient information to show that the sampling system is in compliance with all requirements of paragraph (a) of this section.

Note to paragraph (b): A public notice dated December 9, 1985 giving additional information on approval of antenna sampling systems is available through the Internet at http://www.fcc.gov/mmb/asd/decdoc/letter/1985-12-09—sample.html.

* * * * *

(d) * * *

(1) Special Temporary Authority (*see* § 73.1635) shall be requested and obtained from the Commission's Audio Services Division, Mass Media Bureau in Washington to operate with parameters at variance with licensed values pending issuance of a modified license specifying parameters subsequent to modification or replacement of components.

* * * * *

6. Amend § 73.69 by revising paragraphs (c) and (d)(5) to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the allowed period, an informal letter request in accordance with § 73.3549 of the Commission's rules must be filed with the FCC, Attention: Audio Services Division, Mass Media Bureau in Washington, DC for such additional time as may be required to complete repairs of the defective instrument.

(d) * * *

(5) An informal letter request for modification of license shall be submitted to the FCC, Attention: Audio Services Division, Mass Media Bureau in Washington, DC within 30 days of the date of monitor replacement. Such request shall specify the make, type, and serial number of the replacement monitor, phase and sample current indications, and other data obtained pursuant to paragraph (d) of this section.

* * * * *

7. Amend § 73.151 by revising paragraph (a) introductory text and (a)(1) introductory text to read as follows:

§ 73.151 Field strength measurements to establish performance of directional antennas.

(a) In addition to the information required by the license application form, the following showing must be submitted to establish, for each mode of directional operation, that the effective measured field strength (RMS) at 1 kilometer (km) is not less than 85 percent of the effective measured field strength (RMS) specified for the standard radiation pattern, or less than that specified in § 73.189(b) for the class of station involved, whichever is the higher value, and that the measured field strength at 1 km in any direction does not exceed the field shown in that direction on the standard radiation pattern for that mode of directional operation:

(1) A tabulation of inverse field strengths in the horizontal plane at 1 km, as determined from field strength measurements taken and analyzed in accordance with § 73.186, and a statement of the effective measured field strength (RMS). Measurements shall be made in at least the following directions:

* * * * *

8. Amend § 73.213 by revising paragraph (a) introductory text to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by § 73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations, provided that (i) any area predicted to receive interference lies completely within any area currently predicted to receive co-channel or first-adjacent channel interference as calculated in accordance with paragraph (a)(1) of this section, or that (ii) a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

* * * * *

9. Amend § 73.258 by revising paragraph (d) to read as follows:

§ 73.258 Indicating instruments.

* * * * *

(d) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, an informal letter request in accordance with § 73.3549 may be filed with the FCC, Attention: Audio Services Division, Mass Media Bureau, in Washington, DC for such

additional time as may be required to complete repairs of the defective instrument.

10. Amend § 73.312 by revising paragraph (b) to read as follows:

§ 73.312 Topographic data.

* * * * *

(b) The Commission will not ordinarily require the submission of topographical maps for areas beyond 24 km (15 miles) from the antenna site, but the maps must include the principal city or cities to be served. If it appears necessary, additional data may be requested.

* * * * *

11. Amend § 73.313 by revising paragraphs (c)(2) and (d)(2) to read as follows:

§ 73.313 Prediction of coverage.

* * * * *

(c) * * *

(2) To use the chart for other ERP values, convert the ordinate scale by the appropriate adjustment in dB. For example, the ordinate scale for an ERP of 50 kW should be adjusted by 17 dB [10 log (50 kW) = 17 dBk], and therefore a field strength of 60 dBu would correspond to the field strength value at (60 − 17 =) 44 dBu on the chart. When predicting the distance to field strength contours, use the maximum ERP of the main radiated lobe in the pertinent azimuthal direction (do not account for beam tilt). When predicting field strengths over areas not in the plane of the maximum main lobe, use the ERP in the direction of such areas, determined by considering the appropriate vertical radiation pattern.

(d) * * *

(2) Where the 3 to 16 kilometers portion of a radial extends in whole or in part over a large body of water or extends over foreign territory but the 50 uV/m (34 dBu) contour encompasses land area within the United States beyond the 16 kilometers portion of the radial, the entire 3 to 16 kilometers portion of the radial must be included in the computation of antenna height above average terrain. However, where the 50 uV/m (34 dBu) contour does not so encompass United States land area, and (i) the entire 3 to 16 kilometers portion of the radial extends over large bodies of water or over foreign territory, such radial must be completely omitted from the computation of antenna height above average terrain, and (ii) where a part of the 3 to 16 kilometers portion of a radial extends over large bodies of water or foreign territory, only that part of the radial extending from 3 kilometers to the outermost portion of land in the United States covered by the radial used must be used in the computation of antenna height above average terrain.

* * * * *

12. Amend § 73.503 by revising the note at the end of the section to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

Note to § 73.503: Commission interpretation on this rule, including the acceptable form of acknowledgements, may be found in the *Second Report and Order* in Docket No. 21136 (Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations), 86 FCC 2d 141 (1981); the *Memorandum Opinion and Order* in Docket No. 21136, 90 FCC 2d 895 (1982), and the *Memorandum Opinion and Order* in Docket 21136, 97 FCC 2d 255 (1984). *See also,* "Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations," Public Notice, 7 FCC Rcd 827 (1992), which can be retrieved through the Internet at http://www.fcc.gov/mmb/asd/nature.html.

13. Amend § 73.561 by revising paragraphs (c) and (d) to read as follows:

§ 73.561 Operating schedule; time sharing.

* * * * *

(c) A departure from the regular schedule set forth in a time-sharing agreement will be permitted only in cases where a written agreement to that effect is reduced to writing, is signed by the licensees of the stations affected thereby, and is filed in triplicate by each licensee with the Commission, Attention: Audio Services Division, Mass Media Bureau, prior to the time of the proposed change. If time is of the essence, the actual departure in operating schedule may precede the actual filing of the written agreement, provided that appropriate notice is sent to the Commission in Washington, DC, Attention: Audio Services Division, Mass Media Bureau.

(d) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraphs (a) or (b) of this section or to continue operating, the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission, *Provided,* That notification is sent to the Commission in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, no later than the 10th day of limited or discontinued operation. During such period, the permittee shall continue to adhere to the requirements of the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the permittee or licensee will notify the FCC, Attention: Audio Services Division of the date that normal operations resumed. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, Special Temporary Authority (*see* Section 73.1635) must be requested to remain silent for such additional time as deemed necessary. The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of license to the contrary.

14. Amend § 73.1350 by revising paragraph (g) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(g) Whenever a transmission system control point is established at a location other than the main studio or transmitter, a letter of notification of that location must be sent to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, within 3 days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

* * * * *

15. Amend § 73.1560 by revising paragraph (d) to read as follows:

§ 73.1560 Operating power and mode tolerances.

* * * * *

(d) *Reduced power operation.* In the event it becomes technically impossible to operate at authorized power, a broadcast station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC. If operation at reduced power will exceed 10 consecutive days, notification must be made to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, not later than the 10th day of the lower power operation. In the event that normal power is restored within the 30 day period, the licensee must notify the FCC of the date that normal operation was restored. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority (*see*

§ 73.1635) must be made to the FCC in Washington, DC for additional time as may be necessary.

16. Amend § 73.1680 by revising paragraph (b) introductory text to read as follows:

§ 73.1680 Emergency antennas.

* * * * *

(b) Prior authority from the FCC is not required by licensees and permittees to erect and commence operations using an emergency antenna to restore program service to the public. However, an informal letter request to continue operation with the emergency antenna must be made within 24 hours to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, within 24 hours after commencement of its use. The request is to include a description of the damage to the authorized antenna, a description of the emergency antenna, and the station operating power with the emergency antenna.

* * * * *

17. Revise § 73.1750 to read as follows:

§ 73.1750 Discontinuance of operation.

The licensee of each station shall notify by letter the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.

18. Amend § 73.3542 by revising paragraph (b) to read as follows:

§ 73.3542 Application for emergency authorization.

* * * * *

(b) Emergency operating authority issued under this section may be cancelled or modified by the FCC without prior notice or right to hearing. *See also* § 73.1250, Broadcasting Emergency Information, for situations in which emergency operation may be conducted without prior authorization, and § 73.1635, Special Temporary Authorization (STA), for temporary operating authorizations necessitated by circumstances not within the ambit of this section.

19. Amend § 73.3544 by revising paragraph (b) introductory text to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(b) An informal application, see § 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau, to cover the following changes:

* * * * *

20. Revise § 73.3549 to read as follows:

§ 73.3549 Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC in Washington, DC, Attention: Audio Services Division (radio) or Video Services Division (television), Mass Media Bureau. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

21. Add a new § 73.3617 to read as follows:

§ 73.3617 Broadcast information available on the Internet.

The Mass Media Bureau and each of its Divisions provide information on the Internet regarding broadcast rules and policies, pending and completed rulemakings, and pending applications. These sites also include copies of public notices and texts of recent decisions. The Mass Media Bureau Internet address ishttp://www.fcc.gov/mmb/; the Audio Services Division address ishttp://www.fcc.gov/mmb/asd/; the Video Services Division address is http://www.fcc.gov/mmb/vsd/; the Policy and Rules Division address is http://www.fcc.gov/mmb/prd/; and the Enforcement Division address is http://www.fcc.gov/mmb/enf/.

Alphabetical Index

22. Add the following references to the Alphabetical Index at the end of part 73, in alphabetical order:

Construction Near or Installation On an AM Tower	73.1692
* * * * * * *	
Information available on the Internet	73.3617
* * * * * * *	
Installation On or Construction Near an AM Tower	73.1692
* * * * * * *	

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

23. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307 and 554.

24. Amend § 74.734 by revising paragraph (a)(4) to read as follows:

§ 74.734 Attended and unattended operation.

(a) * * *

(4) A letter notification must be filed with the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, providing the name, address, and telephone number of a person or persons who may be called to secure suspension of operation of the transmitter promptly should such action be deemed necessary by the FCC. Such information shall be kept current by the licensee.

* * * * *

25. Amend § 74.751 by revising paragraph (c) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(c) Other equipment changes not specifically referred to in paragraphs (a) and (b) of this section may be made at the discretion of the licensee, provided that the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, is notified in writing upon the completion of such changes.

* * * * *

26. Amend § 74.763 by revising paragraph (b) to read as follows:

§ 74.763 Time of operation.

* * * * *

(b) In the event that causes beyond the control of the low power TV or TV translator station licensee make it impossible to continue operating, the licensee may discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, not later than the 10th day of discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the FCC in Washington, DC, Attention: Video Services Division, Mass Media Bureau, shall be notified in writing of the date normal operations resumed. If causes beyond the control of the licensee make it impossible to comply within the allowed period, a request for Special Temporary Authority (*see* § 73.1635 of this chapter) shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

27. Amend § 74.784 by revising paragraph (b) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(b) The licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station or other station authorized under the provisions of this Subpart without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. The FCC, Attention: Video Services Division, Mass Media Bureau, shall be notified of the call letters of each station rebroadcast, and the licensee of the low power TV or TV broadcast translator station shall certify it has obtained written consent from the licensee of the station whose programs are being retransmitted.

* * * * *

28. Amend § 74.1231 by revising paragraph (b) introductory text to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201–220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided,* however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

* * * * *

29. Amend § 74.1234 by revising paragraph (a)(4) to read as follows:

§ 74.1234 Unattended operation.

(a) * * *

(4) The FCC in Washington, DC, Attention: Audio Services Division, Mass Media Bureau, shall be supplied by letter with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * *

30. Amend § 74.1235 by revising paragraph (c) and adding paragraphs (d)(1), (d)(2) and (d)(3) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(c) The effective radiated power of FM booster stations shall be limited such that the predicted service contour of the booster station, computed in accordance with § 73.313 paragraphs (a) through (d) of this chapter, may not extend beyond the corresponding service contour of the primary FM station that the booster rebroadcasts. In no event shall the ERP of the booster station exceed 20% of the maximum allowable ERP for the primary station's class.

(d) * * *

(1) Translator stations located within 125 kilometers of the Mexican border may operate with an ERP up to 50 watts (0.050 kW) ERP. A booster station may not produce a 34 dBu interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour of the booster station exceed 8.7 km from the transmitter site in the direction of the Mexican border.

(2) Translator stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with an ERP in excess of 50 watts, up to the maximum permitted ERP of 250 watts per § 74.1235(b)(2). However, in no event shall the location of the 60 dBu contour lie within 116.3 km of the Mexican border.

(3) Applications for translator or booster stations within 320 km of the Canadian border may employ an ERP up to a maximum of 250 watts, as specified in § 74.1235(a) and (b). The distance to the 34 dBu interfering contour may not exceed 60 km in any direction.

* * * * *

31. Amend § 74.1251 by revising paragraph (b)(6) to read as follows:

§ 74.1251 Technical and equipment modifications.

* * * * *

(b) * * *

(6) Any change in the output frequency of a translator.

* * * * *

32. Add a new § 74.1290 to read as follows:

§ 74.1290 FM translator and booster station information available on the Internet.

The Mass Media Bureau's Audio Services Division provides information on the Internet regarding FM translator and booster stations, rules, and policies at http://www.fcc.gov/mmb/asd/.

Alphabetical Index

33. Add the following reference to the Alphabetical Index at the end of part 74, in alphabetical order:

*	*	*	*	*	*	*
Information on the Internet, FM translator and booster stations						74.1290
*	*	*	*	*	*	*

[FR Doc. 98–16513 Filed 6–19–98; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 119
Monday, June 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 71

[Airspace Docket No. 98–ANM–12]

Proposed Revision of Class E Airspace; Price, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Carbon County Airport. This new SIAP requires airspace extending upward from 1200 feet above the surface in order to contain an associated holding procedure.

DATES: Comments must be received on or before August 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Price, UT. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 36 SIAP to the Carbon County Airport, Price, UT. This amendment proposes to add a 1200-foot Class E area extension to the south in order to accommodate a holding pattern for the SIAP. The holding pattern is required to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Carbon County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, 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 would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; 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.

* * * * *

ANM UT E5 Price, UT

Price, Carbon County Airport, UT
(Lat. 39°36'43" N, long. 110°45'02" W)
Carbon VOR/DME
(Lat. 39°36'11" N, long. 110°45'13" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Carbon VOR/DME, and within 1.8 miles each side of the 200° radial of the Carbon VOR/DME extending from the 4.3-mile radius to 7 miles south of the Carbon VOR/DME; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°50'00" N, long. 111°00'00" W; to lat. 39°45'00" N, long. 110°30'00" W; to lat. 39°05'00" N, long. 110°30'00" W; to lat. 39°05'00" N, long. 111°00'00" W; to lat. 39°21'00" N, long. 111°05'00" W; thence to point of beginning; excluding that airspace within Federal Airways, the Moab, UT, and the Salt Lake City, UT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on June 8, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–16546 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[HCFA–1906–P]

RIN 0938–AI44

Medicare Program; Payment for Teleconsultations in Rural Health Professional Shortage Areas

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement parts of section 4206 of the Balanced Budget Act of 1997 by amending our regulations to provide for payment for professional consultation by a physician and certain other practitioners via interactive telecommunication systems. Payment may be made if the physician or other practitioner is furnishing a service for which payment may be made under Medicare to a beneficiary residing in a rural area that is designated as a health professional shortage area.

This proposed rule would also establish a methodology for determining the amount of payments made for the consultation.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 21, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1906–P, P.O. Box 26676, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1906–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Craig Dobyski, (410) 786–4584.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Telemedicine is the use of telecommunications to furnish medical information and services. Generally, two different kinds of technology are in use in telemedicine. One technology is two-way interactive video. This technology is used, for example, when a consultation involving the patient, the primary care giver, and a specialist is necessary. The videoconferencing equipment at two (or more) locations permits a "real-time" or "live" consultation to take place, providing for two-way exchange of information between the locations during the examination. We refer to this process as "teleconsultation." Teleconsultation typically involves a primary care practitioner with a patient at a remote, rural (spoke) site and a medical specialist (consultant) at an urban or referral center (hub) facility, with the primary care practitioner seeking advice from the consultant concerning the patient's condition or course of treatment.

The other technology, called "store and forward," is used to transfer video images from one location to another. A camera or similar device records (stores) an image(s) that is then sent (forwarded) via telecommunications media to another location for later viewing. The sending of x-rays, computed tomography scans, or magnetic resonance images are common store-and-forward applications. The original image may be recorded and/or forwarded in digital or analog format and may include video "clips" such as ultrasound examinations, where the series of images that are sent may show full motion when reviewed at the receiving location.

Currently, Medicare allows payment for those telemedicine applications in which, under conventional health care delivery, the medical service does not require face-to-face "hands on" contact between patient and physician. For example, Medicare permits coverage of teleradiology, which is the most widely used and reimbursed form of telemedicine, as well as physician interpretation of electrocardiogram and electroencephalogram readings that are transmitted electronically. In contrast, Medicare does not cover other physicians services delivered through telecommunications systems because,

under the conventional delivery of medicine, those services are furnished in person.

B. Legislation

In section 4206 of the Balanced Budget Act of 1997 (BBA)(Public Law 105–33), the Congress required that, not later than January 1, 1999, Medicare Part B (Supplementary Medical Insurance) pay for professional consultation via telecommunications systems. Under section 4206(a), the provision applies to consultations with a physician or with certain other practitioners (identified below) furnishing a service for which payment may be made under Part B, provided the service is furnished to a beneficiary who resides in a county in a rural area that is designated as a health professional shortage area, and notwithstanding that the physician or other practitioner furnishing the consultation is not at the same location as the physician or other practitioner furnishing the service to the beneficiary.

The practitioners listed in section 4206(a) are physicians (as defined in section 1861(r) of the Social Security Act (the Act)) and those practitioners described in section 1842(b)(18)(C) of the Act. The practitioners described in 1842(b)(18)(C) include: physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, anesthesiologist's assistants, nurse-midwives, clinical social workers, and clinical psychologists.

Section 4206(b) requires that the Secretary establish a methodology for determining the amount of payments made for a consultation, within the following parameters:

- The payment is to be shared between the referring practitioner and the consulting practitioner. The amount of the payment is not to exceed the current fee schedule amount that would be paid to the consulting practitioner.
- The payment is not to include any reimbursement for any telephone line charges or any facility fees, and a beneficiary may not be billed for these charges or fees.
- The payment is to be subject to the coinsurance and deductible requirements under section 1833(a)(1) and (b) of the Act.
- The payment differential of section 1848(a)(3) of the Act is to be applied to services furnished by nonparticipating physicians. (Section 1848(a)(3) specifies that, in the case of physicians services furnished by a nonparticipating physician, the payment basis is 95 percent of what it would have been had the service been furnished by a participating physician.)
- The provisions of sections 1848(g) and 1842(b)(18) of the Act are to apply. (Section 1848(g) provides a limitation on charges to beneficiaries and provides sanctions if a physician, supplier, or other person knowingly and willfully repeatedly bills or collects for services in violation on the limitation. It also provides for sanctions if a physician, supplier, or other person fails (1) to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge for the service, or (2) to timely refund excess collections. In addition, it requires that physicians and suppliers submit claims, for services they furnished to a beneficiary, to a carrier on behalf of the beneficiary using a standard claim form specified by the Secretary. The statute imposes a penalty for failure to so submit the claim. In addition, section 1848(g) prohibits imposing any charge relating to completing and submitting the claim. Section 1842(b)(18) provides that services furnished by a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, anesthesiologist's assistant, certified nurse-midwife, clinical social worker, or clinical psychologist for which payment may be made on a reasonable charge or fee schedule basis may be made only on an assignment-related basis. It also limits the beneficiary's liability to any applicable deductible and coinsurance amounts. It further provides for sanctions against a practitioner who knowingly and willfully bills (or collects an amount) in violation of the limitation.)
- Further, payment for the consultation service is to be increased annually by the update factor for physicians services determined under section 1848(d) of the Act.

In addition, the statute directs that, in establishing the methodology for determining the amount of payment, the Secretary take into account the findings of the report required by section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the findings of the report required by section 4206(c) of the BBA, and any other findings related to clinical efficacy and cost-effectiveness of telehealth applications.

C. HCFA Telemedicine Demonstration Program

In October 1996, we began a demonstration of Medicare fee-for-service payment for teleconsultation services. The demonstration is expected to run through fiscal year 2001. Under the demonstration, providers at selected sites in Iowa, Georgia, North Carolina, and West Virginia have been furnishing teleconsultation services. These sites were selected as a result of proposals submitted during our 1993 and 1994 general research solicitations and a subsequent expansion request in 1998. Special data collection plans are in place for those health care providers participating in the demonstration. The demonstration is being independently evaluated through a cooperative agreement with the Center for Health Policy Research in Denver.

In this demonstration, we are experimenting with a variety of payment options beyond that proposed under this rule. Since relatively little is known at present about either the process or content of telemedicine service delivery, we expect to learn from the demonstration about the general characteristics and practice patterns of telemedicine practitioners. After completion of the demonstration, we will compare the results to operations under the reimbursement strategy that would be established under this proposed rule, and we may propose adjustments, as appropriate.

II. Provisions of This Proposed Rule

This rule proposes to establish policies for implementing the provisions of section 4206 of the BBA that address Medicare reimbursement for telehealth services.

A. Professional Consultation Services Via Telecommunications Systems

The title of section 4206 of the BBA refers to telehealth services, although the text specifically refers to professional consultation services via telecommunications systems. In this document, we will refer to professional consultation services via telecommunications systems as teleconsultations.

A consultation is a type of service provided by a physician (or, under section 4206, certain other health care practitioners) "whose opinion or advice regarding evaluation and/or management of a specific problem is requested by another physician or other appropriate source. A [physician] consultant may initiate diagnostic and/or therapeutic services. The request for a consultation from the attending physician or other appropriate source and the need for consultation must be documented in the patient's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the patient's medical record and

communicated to the requesting physician or other appropriate source." [1] We do not consider a teleconsultation to be a new medical service; rather, we consider it to be a new way or process of delivering a consultation.

Earlier in this document we included a discussion of the two general technologies used in telemedicine, that is, store and forward, and interactive video. We believe that, although asynchronous transmission may be sufficient for diagnostic interpretation of images (such as radiological images), a teleconsultation is equivalent to a traditional, face-to-face consultation only if it permits the consultant to control the examination of the patient as the examination is taking place. With store-and-forward technology, the consultant is reviewing an examination that has already occurred and is limited to whatever information was recorded at that time.

We believe that a teleconsultation instead must be an interactive patient encounter. The teleconsultation must meet the criteria included in the descriptor quoted above for a given consultation service and include—

- Clinical assessment via medical examination directed by the consultant (specialist);
- The use of multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way real time communication;
- Participation of the referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant; and
- Feedback of the consultation assessment to the referring practitioner.

Note that, to qualify for Medicare payment, the patient must be present and the telecommunications technology must allow the consulting practitioner to control an interactive medical examination of the patient. Store and forward technologies would not allow a medical examination of the patient but would allow only a review of a prior examination, test, or diagnostic procedure, which would be outside the scope of this proposed rule. By requiring an interactive communications system, however, we are not mandating full motion video, but are requiring interactive real time audio-video communication. We recognize that full motion video requires large bandwidth that may be physically and/or financially unavailable to many health care entities in rural areas. This rule would not prohibit the use of lower end interactive video technology in which less than full motion video is sufficient for the consulting practitioner to control an examination of the patient. As such, we would encourage the use of the simplest and least expensive equipment that meets the real time requirement proposed under this rule.

The [Physicians'] Current Procedural Terminology (CPT) is a systematic listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other medical practitioners. We propose to cover as teleconsultation services the following categories of services listed as consultant services in the 1998 CPT:

Office or Other Outpatient Consultations—CPT codes 99241 through 99245;

Initial Inpatient Consultations—CPT codes 99251 through 99255;

Follow-up Inpatient Consultations—CPT codes 99261 through 99263; and

Confirmatory Consultations—CPT codes 99271 through 99275.

Proposed Regulatory Provisions

Based on the above, we would specify, in paragraph (a) of proposed § 410.75 (Consultations via telecommunication systems), that Medicare Part B pays for professional consultations furnished by means of interactive telecommunications systems if the following conditions, and others discussed later in this preamble, are met:

- The medical examination of the beneficiary is under the control of the consultant practitioner.
- The consultation involves the participation of the referring practitioner, as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant.
- The consultation results in a written report that is furnished to the referring practitioner.

In addition, at paragraph (b) of § 410.75, we would define "interactive telecommunications systems" as multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way, real time consultation among the patient, consulting practitioner, and referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consulting practitioner. We would also specify that telephones, facsimile machines, and electronic mail systems do not meet the definition of interactive telecommunications systems.

B. Coverage and Eligibility Provisions

In addition to limiting telemedicine coverage to consultation services, section 4206 of the BBA limits coverage of teleconsultations to services furnished to Medicare beneficiaries residing in a "county in a rural area * * * that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act * * *." Section 332 of the Public Health Service Act authorizes the Secretary to designate health professional shortage areas (HPSAs) based on criteria established by regulation. HPSAs are defined in section 332 to include geographic areas, population groups, and facilities with shortages of health professionals. Section 332(a)(1)(A) speaks to geographic HPSAs.

We found the language "a county in a rural area * * * that is designated as a health professional shortage area" to be somewhat ambiguous. We considered that the Congress may have intended that the benefit apply only to county-wide HPSAs (an entire county that is designated as an HPSA), but have rejected that construction of the law. First, it would seem illogical to restrict coverage of teleconsultations to county-wide HPSAs. The purpose of this provision is to provide access to health care for beneficiaries who now may face barriers to that care because they reside in rural areas where there is a shortage of medical professionals. We do not believe the Congress intended that only beneficiaries in the largest HPSAs be entitled to the telemedicine benefit. We note that an existing statutory provision related to HPSAs, that is, the 10 percent incentive payment for physician services furnished in HPSAs, does not make a distinction between county-wide HPSAs and other HPSAs. Second, we found that, by limiting coverage of teleconsultations to county-wide HPSAs, we would perpetuate barriers to care because many HPSAs would be excluded. From a random review of HPSA listings, we found that beneficiaries in at least one eastern State would not be entitled to telemedicine coverage because there are no county-wide HPSAs in that State. In several western States, we found that between 50 percent and 95 percent of rural HPSAs would be excluded as sites for the telehealth benefit. Therefore, for purposes of this section, we would specify that teleconsultations are covered only in rural HPSAs as defined in the Public Health Service Act.

[1] [Physicians'] Current Procedural Terminology (4th Edition, 1998, copyrighted by the American Medical Association), p. 20.

We had a number of concerns about the statutory language that ties coverage of teleconsultations to services furnished to a beneficiary "*residing* in a county in a rural area * * *." [emphasis supplied]. Medicare claims processing systems are not geared to making such eligibility determinations. Therefore, such a provision would add another "gatekeeping" responsibility to the presenting practitioner by requiring him or her to screen the beneficiary's address for eligibility for the teleconsultation benefit. To do this, the practitioner would need to develop and maintain a list of HPSAs for all areas covering the entire population base from which he or she would potentially draw patients. Moreover, the centralized beneficiary file, which contains the beneficiary's address and is maintained by us, would also have to contain a list of HPSAs nationwide against which the beneficiary's address would be compared. We note that, if an eligibility error were made, it would not be detected until a claim is submitted, which occurs only after the service has been furnished. At that point, Medicare payment on the claim would be denied, and the beneficiary would be liable for the full charges for the teleconsultation service. We believe that the Congress did not intend to expose Medicare beneficiaries to this financial risk. Therefore, we propose to use the location of the presenting practitioner at the time of the service, that is, where the beneficiary is receiving care, as proxy for the beneficiary's residence. If the location of the presenting practitioner is in a rural HPSA (as defined above), we believe it can be reasonably presumed that the beneficiary resides in a rural HPSA. However, if a beneficiary can demonstrate that he or she lives in a rural HPSA, we would allow payment for the teleconsultation without regard to the location of the originating facility (site of presentation).

Section 4206(a) of the BBA specifically requires that Medicare make payments for professional consultation via telecommunications systems with a physician or "a practitioner (described in section 1842(b)(18)(C) of the Act." Nonphysician practitioners who may provide a teleconsultation include physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists or anesthesiologists' assistants, certified nurse midwives, clinical social workers, and clinical psychologists. However, for consultation services delivered via traditional face-to-face "hands on" methods, current Medicare policy does not permit certified registered nurse anesthetists, anesthesiologist's assistants, clinical social workers, or clinical psychologists to bill for these services. We note that, although section 4206 of the BBA provides for coverage of teleconsultations furnished by certain health practitioners other than physicians, this provision does not change current Medicare coverage policy for consultation services delivered in person.

Proposed Regulatory Provisions

Based on the above, we would provide at § 410.75 that, as a condition for Medicare Part B payment for the teleconsultation—

- The referring and consultant practitioner must be any of the following:
  + A physician as described in existing § 410.20.
  + A physician assistant as defined in existing § 491.2.
  + A nurse practitioner as defined in existing § 491.2.
  + A clinical nurse specialist as described in existing § 424.11(e)(6).
  + A certified registered nurse anesthetist or anesthesiologist's assistant as defined in existing § 410.69.
  + A certified nurse-midwife as defined in existing § 405.2401.
  + A clinical social worker as defined in existing § 410.73(a).
  + A clinical psychologist as described in existing § 410.71(d).
- The services must be furnished to a beneficiary residing in a rural area as defined in section 1886(d)(2)(D) of the Act that is designated as an HPSA under section 332(a)(1)(A) of the Public Health Service Act. We would further specify that for purposes of this requirement, the beneficiary is deemed to be residing in such an area if the teleconsultation presentation takes place in such an area.

C. Payment Provisions

General Payment

Section 4206 of the BBA provides that payment for a teleconsultation may not exceed the amount in the current fee schedule for the consulting practitioner. Medicare payment for physicians services is made, under section 1848 of the Act, on the resource-based fee schedule. Payment to the other health care practitioners listed earlier, authorized under section 1833 of the Act, is based on a percentage of the physician fee schedule. Therefore, we would pay for teleconsultation services furnished by physicians at 80 percent of the lower of the actual charge or the fee schedule amount for physicians services, and those furnished by other practitioners at 80 percent of the lower of the actual charge or that practitioner's respective percentage of the physician fee schedule (that is, the fee schedule for clinical psychologists would be 100 percent of the physician fee schedule; for clinical social workers, the fee schedule would be 75 percent of the clinical psychologist fee schedule; and for all other eligible health care practitioners, the fee schedule would be 85 percent of the physician fee schedule).

Site of Service

We recognize that the consulting and presenting practitioners will likely be located a significant distance apart, raising the issue of where the service is being furnished. The site of service determines the pricing locality to be used for Medicare payment. In our view, the use of telecommunications to furnish a medical service effectively transports the patient to the consultant (a concept analogous to the traditional delivery of health care, in which the patient travels to the consultant's office). Therefore, we believe that the site of service for a teleconsultation is the location of the practitioner providing the consultation. We thus would designate the location of the consultant at the time of the service as the applicable pricing locality for teleconsultation claims. As a result, the fee schedule for the consultation will reflect the geographic adjustment factor applicable to the consulting practitioner.

We considered designating the location of the beneficiary as the site of service (and pricing locality) but rejected this option because this alternative would likely result in lower payment levels than the consultant would have otherwise received if the beneficiary had traveled to his or her office for a consultation. This would probably occur because the consulting practitioner, who is a medical specialist, is usually affiliated with a "hub" facility, which is typically a major medical center located in an urban or metropolitan area. The referring practitioner is located at the "spoke" facility, which is typically a primary care facility and, under the provisions of section 4206 of the BBA, is in a rural HPSA area. In the majority of cases, we would expect that the different geographic adjustment factors used to adjust the relative value units (RVUs) under the physician fee schedule are somewhat higher for urban areas than for rural areas because the cost of operating a medical practice in an urban area is generally higher.

We also considered using a neutral site of service, which would be neither

practitioner's respective location. This option was based on the proposition that the service is furnished in "cyber space" rather than at a fixed location. Under this approach, payment would have been based on the RVUs for the service, with no geographic adjustment factor applied. As a result, payment would be the same nationwide, regardless of the practitioners' geographic locations. We rejected this option because the use of unadjusted national RVUs could result in a payment amount that exceeds the amount the consulting practitioner would have otherwise received, thereby exceeding the payment ceiling imposed by section 4206 of the BBA. Conversely, use of unadjusted national RVUs could result in a lower payment amount than the consulting practitioner would have otherwise received, thereby creating a disincentive for specialists to furnish teleconsultations.

Payment Allocation

Section 4206 further provides that payment be shared between the referring and consulting practitioners. We propose to allocate the payment in the following manner: the consulting practitioner will receive 75 percent of the applicable amount, and the presenting practitioner will receive the remaining 25 percent of the applicable amount. Using a hypothetical consultation payment of $100, this would result in a payment of $75 to the consultant and $25 to the presenting practitioner.

We arrived at these percentages by developing a mean teleconsultation RVU to simulate the level of intensity for both a consulting practitioner and a presenting practitioner. In determining the mean RVUs for the consulting practitioner, we used fiscal year (FY) 1997 RVUs applicable to the proposed covered consultation services (that is, CPT codes 99241–99245, 99251–99255, 99261–99263, and 99271–99275). In determining the mean RVUs for the presenting practitioner, we used FY 1997 RVUs applicable to office/inpatient visit services for established patients (that is, CPT codes 99211–99215, 99221–99223, and 99231–99233). We decided to use established visit codes to represent the presenting practitioner's role in the teleconsultation to reflect the fact that a primary care practitioner has already seen the patient to have determined that a consultation is necessary. RVUs were weighted by the frequency of 1997 national allowed services attributed to each CPT code. The weighted mean RVUs for both consulting and presenting practitioner were calculated as a percentage of the total simulated weighted mean teleconsultation RVUs. A summary of this process is shown in the following table.

PRACTITIONER ALLOCATION SUMMARY TABLE

	Model #1 w/50% work expense reduction to presentation component	Model #2 w/full RVUs
Intensity Simulation: *		
Mean Consultation RVU	3.21	3.21
Mean Established Office/Inpatient Visit RVU	0.91	1.35
Total RVU	4.12	4.56
Percentage Allocation: **		
Consulting Practitioner	80%	70%
	(3.21 + 4.12 = 77.91%)	(3.21 + 4.56 = 70.39%)
	Rounded to 80%	Rounded to 70%
Presenting Practitioner	20%	30%
	(0.91 + 4.12 = 22.09%)	(1.35 + 4.56 = 29.60%)
	Rounded to 20%	Rounded to 30%
Mid Point of Rounded Allocations: Consultant 75%; Presenter 25%.		

*FY 1997 National mean RVU weighted by FY 1997 national allowed services.
Consultation component includes CPT codes: 99241–99245; 99251–99255; 99261–99263; 99271–99275.
Presentation component includes CPT codes 99211–99215; 99221–99223; 99231–99233.
**Allocations rounded to nearest 5 percent.

The table illustrates two models. In the first model, the work RVUs for outpatient/inpatient evaluation and management (E&M) services were reduced by 50 percent to account for the fact that the presenting practitioner is performing no "new" work. This reduction factor is used under the current Medicare telemedicine demonstration project. Under the demonstration, the work expense for the primary care practitioner is reduced by 50 percent to reflect the fact that the practitioner would have already billed for an initial E&M service prior to initiating the teleconsultation. This model results in a payment allocation in which the consulting practitioner would receive 80 percent of the payment and the presenting practitioner would receive 20 percent of the payment.

In the second model, we did not use a 50 percent reduction in developing the allocation methodology, on the theory that there may be instances in which the medical needs of the patient require a greater amount of work on the part of the presenting practitioner. This model resulted in an allocation in which the consulting practitioner would receive 70 percent and the presenting practitioner would receive 30 percent of the total payment. Because of our lack of information about likely teleconsultation scenarios, we believe that it is reasonable to set the allocations at the midpoint of the values resulting from the two models, that is, a 75 percent allocation for the consulting practitioner and a 25 percent allocation for the presenting practitioner.

We considered reducing the presenting practitioner's share in cases in which the presenting practitioner is a nonphysician practitioner. Thus, if a patient had been presented to a physician by a physician assistant (PA), for example, we considered applying the PA payment rule to the PA's allocation; that is, we would have used 85 percent of the proposed 25 percent allocation as the payment basis for the presenting practitioner. Using a hypothetical physician fee schedule amount of $100, this would result in the following allocation for the consulting

practitioner and presenting practitioner (physician assistant):

Physician fee schedule for teleconsultation	$100.00
Less 75 percent consultant allocation	−75.00
Balance	$25.00
PA percent of physician fee schedule	× .85
PA allocation	$21.25

We rejected this option because we believe that only one service is being furnished and that service is a consultation; there is no "presentation" payable under the Medicare physician fee schedule. In teleconsultation, the resenting practitioner is acting as directed by the consultant. Therefore, in our view, he or she is acting as a surrogate for the consultant rather than as a nonphysician practitioner, and we decided that the payment rule for practitioners should not apply. Thus, the following payment allocation would apply for the consulting physician and a nonphysician presentation practitioner (using the hypothetical fee schedule amount of $100):

Physician fee schedule for teleconsultation	$100.00
75 percent consultant allocation	75.00
25 percent presentation allocation	25.00

However, when a consultation service is furnished by a nonphysician practitioner, rather than a physician, the amount of payment will be made according to the appropriate percentage of the physician fee schedule, which for most nonphysician practitioners is 85 percent. Using the same hypothetical physician fee schedule amount as above, the payment amounts for a nonphysician consulting practitioner and referring practitioner are as follows (when the nonphysician consulting practitioner's fee schedule is 85 percent of the physician fee schedule):

Physician fee schedule for consultation	$100.00
Nonphysician payment rule	× .85
Nonphysician fee schedule amount	$85.00
75 percent consultant allocation	−63.75
Presenting practitioner allocation	$21.25

Bundled Payment

We propose to use a bundled payment approach for teleconsultation services; that is, a single Medicare payment for the total amount due for the service will be made to the consulting practitioner. Under this approach, a claim for a teleconsultation service will be submitted by the consulting practitioner to his or her Medicare carrier. The carrier will make the full payment to the consultant who, in turn, will remit 25 percent of the total to the presenting practitioner. The consultant will be responsible for billing the beneficiary for coinsurance and deductible amounts and also remitting 25 percent of the total to the presenting practitioner. This proposal is consistent with our view that only one service—a teleconsultation—is being provided. As stated earlier, we believe that the presenting practitioner is not providing a distinct service, but acting as a surrogate for the consultant. We believe, moreover, that this approach is better for Medicare beneficiaries because they would receive only one bill for the coinsurance and deductible amount.

Note that the method of payment we have chosen for teleconsultations raises some issues under the physician self-referral law in section 1877 of the Act. Under this provision, a physician is prohibited from referring a Medicare patient to an entity (which can include another physician or a nonphysician practitioner) for the furnishing of certain designated health services if the physician or a member of the physician's immediate family has a financial relationship with that entity. Section 1877 defines "financial relationship" as an ownership or investment interest in the entity or a compensation arrangement with the entity. It is the compensation aspect of the self-referral law that could have a negative impact on teleconsultation payments.

We believe that a presenting physician who refers a case to a consulting practitioner has made a referral under the self-referral law. Under section 1877(h)(5)(A), a physician's referral is defined, in the case of an item or service covered under Part B, as the request by a physician for the item or service, including the request for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician. These referrals could potentially be prohibited if the physician and the providing entity have a financial relationship, such as a compensation arrangement. A compensation arrangement is defined in the law broadly to include any arrangement involving any remuneration between a physician and an entity (other than certain very narrowly defined exclusions). "Remuneration," in turn, is defined to include any remuneration, paid directly or indirectly, overtly or covertly, in cash or in kind. We have further defined the concept of "remuneration" in our regulations covering self-referrals for clinical laboratory services in 42 CFR 411.351 to include *any payment*, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, by an entity to a referring physician.

Our payment policy could place a presenting physician in the position of violating section 1877 if the presenting physician receives payments from the practitioner to whom he or she has referred and the services at issue are designated health services. In order to avoid such a result, we propose to interpret the payments that the consulting practitioner will forward to the presenting physician as falling outside of the definition of "remuneration." That is, we will not regard the consulting practitioner as actually making a payment to the presenting physician, but as simply serving as a "conduit" to pass a portion of the Medicare payment on to the presenting physician, strictly as an administrative convenience to us. We do not believe this interpretation violates the purpose of the self-referral law, which was specifically designed to prevent entities that furnish certain health services from purchasing referrals from physicians.

We considered requiring both the consulting and presenting practitioners to submit separate claims. This alternative was rejected because (1) two services are not being furnished; (2) the beneficiary would receive two cost sharing bills; and (3) the claims processing system would need to link claims from both practitioners to ensure that the total payment does not exceed the payment ceiling provided under section 4206 of the BBA. It would be difficult and costly to implement claims processing systems modifications that would be capable of identifying and linking related teleconsultation claims to prevent overpayments from occurring. Such an effort would become even more complex if two carriers were involved because the practitioners' locations fell within separate carrier jurisdictions. Moreover, total payment might exceed what the consultant would have otherwise received if the presenting practitioner were to submit a claim for a consultation at a higher intensity level than the consultant. For example, the consulting practitioner might bill for a consultation requiring only a detailed examination and low complexity medical decisionmaking, whereas the presenting practitioner might bill for a consultation with a

comprehensive examination and moderately complex decisionmaking. There is a 40 percent difference in the Medicare RVU values between these two services. Another overpayment could occur in those rare cases where the factor for the pricing locality for the presenting practitioner is higher than for the consulting practitioner.

Because of the difficulty in linking claims, we considered another approach that would have involved separate claims, but without linking. We considered establishing a new code for the presenting practitioner's role and pricing it at 25 percent of the average consultation amount. Under this option, the consultant's fee would be based on the appropriate fee schedule and adjusted by the geographic practice cost index, but would be reduced by the flat, national value paid to the presenting practitioner. However, this alternative achieves anomalous results; in several cases, the presenting practitioner would receive more than the consulting practitioner. Therefore, we rejected this option.

Coding: For teleconsultation coding purposes, we would develop modifiers to use in conjunction with existing CPT codes for consultation services. The purpose of the modifier is to identify the service as a consultation furnished via telecommunications systems. This approach conforms with our view that a teleconsultation is simply a new way of delivering a consultation, rather than a new service.

We considered developing a new coding structure for teleconsultations. We rejected this option, however, because it is administratively cumbersome for both the medical community and the Medicare program. First, the practitioner community is already familiar with the current codes for consultation. We believe it will be easier for practitioners to use a single modifier than an entirely new set of codes. Second, separate teleconsultation codes would unnecessarily double the number of current codes used for consultation services.

Proposed Regulatory Provisions

To reflect the above proposals and the payment provisions of section 4206 of the BBA, we would add a new § 414.62 (Payment for consultations via interactive telecommunication systems) to our regulations. We would specify, in paragraph (a), that Medicare total payments for a professional consultation conducted via interactive telecommunications systems may not exceed the current fee schedule amount for the service when furnished by the consulting practitioner. We would further specify that the payment (1) may not include any reimbursement for any telephone line charges or any facility fees, and (2) is subject to the coinsurance and deductible requirements of section 1833(a)(1) and (b) of the Act. We would also specify that the payment differential of section 1848(a)(3) of the Act applies to services furnished by nonparticipating physicians.

In paragraph (b), we would specify that the beneficiary may not be billed for any telephone line charges or any facility fees. In paragraph (c), we would provide that payment to nonphysician practitioners is made only on an assignment-related basis. Paragraph (d) would provide that only the consultant practitioner may bill for the consultation, and paragraph (e) would require the consultant practitioner to provide the referring practitioner 25 percent of any payments, including any applicable deductible or coinsurance amounts, he or she received for the consultation.

Paragraph (f) would specify that a practitioner may be subject to the sanctions provided for in 42 CFR chapter V, parts 1001, 1002, and 1103 if he or she (1) knowingly and willfully bills or collects for services in violation of the limitations of § 414.62 on a repeated basis, or (2) fails to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge or fails to timely refund excess collections.

III. Response to Comments

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

IV. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for proposed rules with economically significant effects (that is, a proposed rule that would have an annual effect on the economy of $100 million or more or would 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). The benefit changes in this proposed rule resulting from the BBA will not result in additional Medicare expenditures of $100 million or more for any single FY through FY 2003. Therefore, this proposed rule is not considered economically significant, and, thus, we have not prepared a regulatory impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We estimate that the cost of providing consultation services in accordance with section 4206 of the BBA will be approximately $20 million in FY 1999 and approximately $90 million by FY 2003. Note that the FY 1999 estimate reflects only a partial year estimate, given the January 1, 1999 effective date for teleconsultation coverage. We estimate that teleconsultation will cost approximately $270 million for the first 5 years of coverage, as indicated below:

MEDICARE COSTS
[In millions]

FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
$19	$39	$54	$70	$88

Additionally, this proposed rule would provide for payment exclusively for professional consultation with a physician and certain other practitioners via interactive telecommunication systems. Section 4206 of the BBA does not provide for payment for telephone line fees or any facility fees associated with teleconsultation that may be incurred by hospitals included in the telemedicine network.

Further, this rule does not mandate that entities provide consultation services via telecommunications. Thus, this rule would not require entities to purchase telemedicine equipment or to acquire the telecommunications infrastructure necessary to deliver consultation services via telecommunication systems. Therefore, this rule does not impose costs associated with starting and operating a telemedicine network.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

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

42 CFR Part 414

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

42 CFR chapter IV would be amended as follows:

A. Part 410.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 410.1 [Amended]

2. Section 410.1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read "Section 4206 of the Balanced Budget Act of 1997 (42 U.S.C. 1395j) sets forth the conditions for payment for professional consultations that take place by means of telecommunications systems.".

3. A new § 410.75 is added to subpart B to read as follows:

§ 410.75 Consultations via telecommunications systems.

(a) *General rule.* Medicare Part B pays for professional consultations furnished by means of interactive telecommunications systems if the following conditions are met:

(1) Each of the referring and consultant practitioner is any of the following:

(i) A physician as described in § 410.20.

(ii) A physician assistant as defined in § 491.2 of this chapter.

(iii) A nurse practitioner as defined in § 491.2 of this chapter.

(iv) A clinical nurse specialist as described in § 424.11(e)(6) of this chapter.

(v) A certified registered nurse anesthetist or anesthesiologist's assistant as defined in § 410.69.

(vi) A nurse-midwife as defined in § 405.2401 of this chapter.

(vii) A clinical social worker as defined in section 1861(hh)(1) of the Act.

(viii) A clinical psychologist as described at § 417.416(d)(2) of this chapter.

(2) The services are furnished to a beneficiary residing in a rural area as defined in section 1886(d)(2)(D) of the Act, and the area is designated as a health professional shortage area (HPSA) under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)). For purposes of this requirement, the beneficiary is deemed to be residing in such an area if the teleconsultation presentation takes place in such an area.

(3) The medical examination of the beneficiary is under the control of the consultant practitioner.

(4) The consultation involves the participation of the referring practitioner, as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consultant.

(5) The consultation results in a written report that is furnished to the referring practitioner.

(b) *Definition.* For purposes of this section, *interactive telecommunications systems* means multimedia communications equipment that includes, at a minimum, audio-video equipment permitting two-way, real time consultation among the patient, consulting practitioner, and referring practitioner as appropriate to the medical needs of the patient and as needed to provide information to and at the direction of the consulting practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of interactive telecommunications systems.

B. Part 414.

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

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

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. Section 414.1 is revised to read as follows:

§ 414.1 Basis and scope.

This part implements the following:

(a) The indicated provisions of the following sections of the Act:

1833—Rules for payment for most Part B services.

1834(a) and (h)—Amounts and frequency of payments for durable medical equipment and for prosthetic devices and orthotics and prosthetics.

1848—Fee schedule for physician services.

1881(b)—Rules for payment for services to ESRD beneficiaries.

1887—Payment of charges for physician services to patients in providers.

(b) Sections 4206(a) and (b) of the Balanced Budget Act of 1997 (42 U.S.C. 1395j).

3. Section 414.62 is added to subpart A, to read as follows:

§ 414.62 Payment for consultations via interactive telecommunications systems.

(a) *Limitations on payment.* Medicare payment for a professional consultation conducted via interactive telecommunications systems is subject to the following limitations:

(1) The payment may not exceed the current fee schedule amount of the consulting practitioner for the health care services provided.

(2) The payment may not include any reimbursement for any telephone line charges or any facility fees.

(3) The payment is subject to the coinsurance and deductible requirements of section 1833(a)(1) and (b) of the Act.

(4) The payment differential of section 1848(a)(3) of the Act applies to services furnished by nonparticipating physicians.

(b) *Prohibited billing.* The beneficiary may not be billed for any telephone line charges or any facility fees.

(c) *Assignment required for nonphysician practitioners.* Payment to nonphysician practitioners is made only on an assignment-related basis.

(d) *Who may bill for the consultation.* Only the consultant practitioner may bill for the consultation.

(e) *Sharing of payment.* The consultant practitioner must provide to the referring practitioner 25 percent of any payments, including any applicable deductible or coinsurance amounts, he or she received for the consultation.

(f) *Sanctions.* A practitioner may be subject to the applicable sanctions provided for in chapter V, parts 1001, 1002, and 1003 of this title if he or she—

(1) Knowingly and willfully bills or collects for services in violation of the limitations of this section on a repeated basis; or

(2) Fails to timely correct excess charges by reducing the actual charge billed for the service to an amount that does not exceed the limiting charge for the service or fails to timely refund excess collections.

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

Dated: February 8, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 14, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–16278 Filed 6–19–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96–115; DA 98–971]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Clarification; proposed rule.

SUMMARY: The Order released May 21, 1998 clarifies various issues pertaining to the *Second Report and Order and Further Notice of Proposed Rulemaking* released February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted and released May 21, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/da98971.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC. 20036.

Synopsis of Order on Reconsideration

I. Introduction

1. On February 26, 1998, the Commission released a *Second Report and Order and Further Notice of Proposed Rulemaking*, 63 FR 20326, April 24, 1998 (*Second Report and Order*), interpreting and implementing, among other things, the portions of section 222 of the Communications Act of 1934, as amended, that govern the use and disclosure of, and access to, customer proprietary network information (CPNI) by telecommunications carriers. Since the release of the *Second Report and Order*, a number of parties have requested that the Commission clarify various issues pertaining to that order. In response to these requests, the Common Carrier Bureau issues this order clarifying the *Second Report and Order* as follows:

(a) Independently-derived information regarding customer premises equipment (CPE) and information services is not CPNI and may be used to market CPE and information services to customers in conjunction with bundled offerings.

(b) A customer's name, address, and telephone number are not CPNI.

(c) A carrier has met the requirements for notice and approval under section 222 and the Commission's rules where it has both provided annual notification to, and obtained prior written authorization from, customers with more than 20 access lines in accordance with the Commission's former CPNI rules.

(d) Although a carrier must ensure that its certification of corporate compliance with the Commission's CPNI rules is made publicly available, it is not required to file this certification with the Commission.

II. Clarification of Marketing Uses of Customer Information Related to CPE or Information Services

2. Section 222(c)(1) establishes the limited circumstances in which carriers can use, disclose, or permit access to CPNI without first obtaining customer approval. In interpreting section 222(c)(1) in the *Second Report and Order*, the Commission adopted an approach that allows carriers to use CPNI, without first obtaining customer approval, to market improvements or enhancements to the package of telecommunications services the carrier already provides to a particular customer, which it referred to as the "total service approach."

3. The Commission's discussion, however, did not specifically address a carrier's ability to use CPNI when its customers obtain their telecommunications service as part of a bundled package that includes non-telecommunications service offerings, such as CPE or certain information services.

4. We make clear that, when a customer purchases CPE or information services from a carrier that are bundled with a telecommunications service, the carrier subsequently may use any customer information independently derived from the carrier's prior sale of CPE to the customer or the customer's subscription to a particular information service offered by the carrier in its

marketing of new CPE or a similar information service that is bundled with a telecommunications service. Neither CPE nor information services constitute "telecommunications services" as defined in the Act. Therefore, any customer information derived from the carrier's sale of CPE or from the customer's subscription to the carrier's information service would not be "CPNI" because section 222(f) defines CPNI in terms of information related to a "telecommunications service." As a result, in situations where the bundling of a telecommunications service with CPE, information services, or other non-telecommunications services is permissible, a carrier may use CPNI to target particular customers in a manner consistent with the *Second Report and Order*, and it also may use the customer information independently derived from the prior sale of the CPE, the customer's subscription to a particular information service, or the carrier's provision of other non-telecommunications offerings to market its bundled offering.

5. In an effort to further explain a carrier's obligation in the context of bundled offerings, we provide an example of how the Commission's rules would apply in the CMRS context. A CMRS provider could use CMRS-derived CPNI to target its high usage analog wireless customers to offer them new digital wireless service plans. If such an analog customer also had purchased previously a CMRS handset, or an information service such as voice mail, as part of a bundled offering from the carrier, the carrier also would have access to information concerning the customer's purchase of the carrier's CPE and information service that is independent from the CPNI derived from the provision of the CMRS service. Consistent with the total service approach, the carrier could use such customer information to market new digitally-compatible CPE and new voice mail service in conjunction with the offering of new digital wireless service in a single contact with the customer, without first obtaining the customer's approval.

6. In contrast, where a particular customer has not purchased CPE or information services from the carrier that is providing its telecommunications services, the carrier would be subsequently prohibited from using CPNI, without first obtaining customer approval, to market a bundled offering of CPE or information services with telecommunications services to such a customer. In this situation, absent customer approval, the carrier would be using CPNI in violation of section 222(c)(1) to market CPE or information services to a customer with whom they had no existing relationship derived from the carrier's sale of CPE or the customer's subscription to the carrier's information service. Similarly, the general knowledge that all wireline customers have a telephone would not permit carriers to use CPNI derived from wireline service to select those individuals to whom to market the carrier's CPE offerings.

7. We also clarify that, only where CPE or an information service is part of a bundled offering, including a telecommunications service, and the carrier is the existing CPE or information service provider, could the carrier use CPNI to market a new bundled offering that includes new CPE or similar information services. For example, carriers cannot use CPNI to select certain high usage customers to whom they also sold telephones, and then market only new CPE that is not part of a new bundled plan. Section 222(c)(1)(A) permits the use of CPNI, without first obtaining customer approval, only "in the provision of the telecommunications service from which such information is derived." Therefore, when a carrier has identified a customer through the use of CPNI, but is not offering a telecommunications service in conjunction with its marketing of CPE or information services, that carrier would be using CPNI outside the provision of the service from which it is derived, in violation of section 222 and the Commission's rules.

III. Customer's Name, Address, and Telephone Number

8. We clarify that a customer's name, address, and telephone number do not fall within the definition of CPNI, set forth in section 222(f)(1).

9. We consider this information to be part of a carrier's business record or customer list that identifies the customer and indicates how that customer can be contacted by the carrier. Although such information generally appears on a customer's billing statement, it does not pertain to the "telephone exchange service or toll service" received by the customer, as specified by the statutory definition in section 222(f)(1)(B). If the definition of CPNI included a customer's name, address, and telephone number, a carrier would be prohibited from using its business records to contact any of its customers to market any new service that falls outside the scope of its existing service relationship with those customers. In fact, under such an interpretation, a carrier would not even be able to contact a single customer in an effort to obtain permission to use their CPNI for marketing purposes because the carrier's mere use of its customer list to initiate contact with its customers would constitute a violation of section 222. This anomalous result was clearly not intended by section 222. Therefore, we clarify that a carrier's use of its customers' name, address, and telephone number for marketing purposes would not be subject to the CPNI restrictions in section 222(c)(1) because such information is not CPNI. Thus, under section 222 and the Commission's rules, a carrier could contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customer's name, address, and telephone number, so long as it does not use CPNI to select a subset of customers from that list.

IV. Notice and Written Approval Under the Computer III CPNI Framework

10. Prior to the adoption of the Telecommunications Act of 1996, the framework established under the Commission's *Computer III* regime governed the use of CPNI by the BOCs, AT&T, and GTE to market CPE and enhanced services. Two important components of this *Computer III* framework were: (1) a carrier's obligation to provide an annual notification of CPNI rights to multi-line customers regarding enhanced services, as well as a similar notification requirement regarding CPE that applied only to the BOCs, and (2) a carrier's obligation to obtain prior written authorization from business customers with more than 20 access lines to use CPNI to market enhanced services. We clarify that in circumstances where a carrier has provided annual notification and received prior written authorization from customers with more than twenty access lines, the requirements for notice and approval under section 222, and the associated Commission rules, are satisfied for those customers.

11. We find that carriers that have complied with the *Computer III* notification and prior written approval requirement in order to market enhanced services to business customers with more than 20 access lines are also in compliance with section 222 and the Commission's rules. Such carriers may rely on their previous compliance with the *Computer III* notification and approval requirements to market enhanced services to business customers with more than 20 access lines without taking any additional steps to notify such customers of their CPNI rights or to obtain customer approval to use CPNI to market enhanced services to such customers.

V. Safeguards

12. As one of several CPNI safeguards, the Commission required in the *Second Report and Order* each carrier to certify that it is in compliance with the Commission's CPNI rules. In describing a carrier's duty, the Commission stated that each carrier must "submit a certification" and that the certification "must be made publicly available." We clarify that the Commission's use of the word "submit" in the order was not intended to require carriers to file such certifications with the Commission. Rather, the order directs carriers to ensure only that these corporate certifications be made publicly available.

VI. Ordering Clauses

13. *It is ordered* that, pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), and authority delegated thereunder pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, this Order is hereby adopted.

Federal Communications Commission.

Richard K. Welch,

Acting Deputy Chief, Common Carrier Bureau.

[FR Doc. 98–16511 Filed 6–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 98–117]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on proposals that would change fundamentally the way it evaluates proposals that would create interference in the FM band. It also seeks comment on whether the contingent application rule should be modified to permit coordinated facility modifications among broadcasters. The Commission proposes a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would not occur; adoption of this methodology would permit certain applicants to obtain greater service improvements. The Commission also proposes other changes to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications to modify existing facilities in several services.

DATES: Comments must be filed on or before August 21, 1998. Reply comments are due September 21, 1998. Written comments by the public on the proposed information collections are due on or before August 21, 1998.

ADDRESSES: All comments and reply comments should be addressed to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings also should be sent to the Mass Media Bureau, Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel (Room 610), 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Dale Bickel or William Scher, Audio Services Division, Mass Media Bureau, (202) 418–2780. For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking (Document)* contact Judy Boley at (202) 418–1214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in MM Docket No. 98–93 and FCC No. 98–117, adopted June 11, 1998 and released June 15, 1998. The complete text of this *Notice of Proposed Rulemaking* is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Negotiated Interference in the FM Service

A. Introduction/Background

1. The Commission frequently has used the term "negotiated interference" to describe agreements between or among stations to accept new or increased interference within their protected service contours, typically in connection with proposals to expand service by one or several stations. The Commission generally has rejected attempts by applicants to negotiate interference levels on a case-by-case basis, holding that the selection of interference standards is a non-delegable Commission responsibility. Nevertheless, the Commission has concluded that the public interest would be served by modifying the contingent application rule and AM cut-off procedures to facilitate coordinated technical changes between AM stations. No parallel changes have been adopted for FM applications, with the exception of certain grandfathered short-spaced stations. Thus, the Commission has condoned the use of agreements to promote service improvements in the technically more difficult AM service, as well as agreements between stations that operate, axiomatically, at spacings substantially less than current new station requirements, while consistently rejecting the use of these same agreements between fully-spaced FM stations where interference concerns generally would be less. In short, current Commission policy provides the least flexibility for technical facility improvements in mid-sized major markets where FM broadcasters face the greatest technical constraints to undertake such improvements.

B. Specific Proposals

i. Agreements Involving Applications for Coordinated FM Station Changes

2. *Background.* Section 73.3517 prohibits the filing of contingent applications in the FM broadcast services.[1] As stated above, the Commission permits the filing of contingent applications to facilitate interference reduction and service improvements by either separately or commonly owned AM stations. The Commission has received similar requests from FM stations that have entered into agreements that propose "coordinated" or "interrelated" facility

[1] The rule does not differentiate between major and minor changes. *Amendment of Sections 1.517 and 1.520*, 61 FCC 2d 38 (1976).

relocations, modifications, and "one-step" upgrades and downgrades.[2]

3. *Discussion.* We propose to allow the filing of contingent minor change FM construction applications on a limited basis. We would require that such applications be filed on the same date, and that each include a copy of the agreement covering all related applications. These related minor change applications would be processed and if grantable, granted simultaneously. The construction permits would be conditioned as necessary to allow an orderly implementation of non-interfering service. If any application in the group could not be approved, we propose to dismiss all applications filed as an interrelated group. We would reject any coordinated agreement that, in our determination, would not serve the public interest. We seek comment on each aspect of this proposal.

4. We also propose to permit the filing of contingent proposals that include one-step upgrade and downgrade applications. We tentatively conclude that this change is consistent with the rationale underlying the one-step policy. The "opportunity" for filing competing proposals in this context is wholly dependent on two stations reaching agreement on the coordinated facility changes. However, stations are reluctant to pursue coordinated facility changes where there is a possibility that a competing application could be filed. We tentatively conclude that the potential preclusion of competing allotment and minor change proposals is consistent with the public interest, and that the proposed procedures are consistent with section 307(b) of the Act.

5. In addition, we tentatively conclude that contingent applications should be limited to four related, simultaneously filed applications. We seek comment on this limitation and whether a different policy should apply where some or all proposals involve stations under common ownership.

6. We also propose additional requirements when the coordinated changes include cancelling an NCE FM station license. In 1990, the Commission decided against establishing a specific local transmission service floor with respect to our public interest evaluation of contingent arrangements that propose to terminate AM facilities. Instead we adopted guidelines that permit case-by-case evaluation of such applications. We propose to apply AM interference reduction principles to NCE FM agreements proposing the cancellation of an NCE FM station license. Thus, proposals could not create white or gray areas.[3] In addition, agreements to terminate a community's only local transmission service would be considered on a case-by-case basis and would take into account the availability of other services and the possibility of restoring local service with either an AM or FM station. We seek comment on whether to establish a "local service floor" to ensure that the granting of contingent applications does not result in a loss of service that would be detrimental to the public interest.

ii. Agreements Involving Applications That Would Cause New or Increased Interference

7. *Background.* The Commission has been extremely reluctant to permit the creation of interference within a station's protected service contour, particularly where none currently exists. We have been concerned that this policy would lead to further clustering of stations in urban areas in contravention of section 307(b) of the Act. We also have opposed such proposals on spectrum efficiency grounds and because grant of interference-creating applications could effectively foreclose facility improvements by stations receiving new interference. Nevertheless, we believe that this technical streamlining initiative provides an opportunity to reconsider our policy options in the context of the technically simpler NCE FM and commercial FM services. Radio is truly a mature service. Congestion in the FM band provides a major technical impediment to the further "urban clustering" of stations. Moreover, a station's core obligation to serve its community of license will continue to limit transmitter relocations and service area modifications. As a result, measures designed to give broadcasters additional flexibility may raise lesser concerns at this time regarding the "fair, efficient, and equitable distribution of radio service * * *."[4]

8. There are additional reasons to reconsider these policies at this time. The financial and management sophistication of the radio broadcast industry has grown dramatically in recent years, spurred by fundamental changes in local ownership and the elimination of national ownership restrictions. Moreover, both Congress and the Commission are committed to relying to the greatest extent possible on competitive communications markets rather than resource-intensive regulatory policies to safeguard the public interest. In this environment, we seek comment on whether it is possible to provide broadcasters some additional flexibility under our technical rules to expand service while at the same time establishing requirements to ensure that negotiated interference agreements are limited to situations where service gains would outweigh service losses and the creation of new and/or expanded areas of interference.

9. *Discussion.* We seek comment on whether we should amend §§ 73.215(a) and 73.509 to permit applications that would result in prohibited overlap and, therefore, interference based on the following four criteria:

(1) Total interference received by any station from all interfering stations must be no greater than five percent of the area and population within each affected station's protected service contour;

(2) Total service gain must be at least five times as great as the increase in total interference, in terms of both area and population. Service gain would be defined as the difference between the current service contour area and population, and the proposed service contour area and population. Total service gain would be the sum of all service gains for all stations included in the agreement. Interference increase would be defined as the difference between the current interference area and population, and the proposed interference area and population. Total interference would be the sum of all interference increases and decreases received by all affected stations and applicants, in terms of area and population. Interference calculations would include interference received by a proposal even if it occured beyond that station's current service contour. If interference calculations made in accordance with this criterion established that total interference would be decreased, an applicant would be exempt from any service gain requirement;

(3) No predicted interference can occur within the boundaries of any

[2] The commercial FM "one-step" processing rules were designed to facilitate improvements by eliminating the necessity for a petition for rulemaking in instances where licensees seek upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channel. One-step applications are processed as minor change applications.

[3] A "white" area receives no full-time aural service, a "gray" area receives one full-time aural service. We note that case law suggests that the Commission is precluded from allowing the creation of any white or gray areas. *See, e.g., West Michigan Television* v. *FCC*, 460 F.2d 883 (D.C. Cir. 1971).

[4] 47 U.S.C. 307(b).

affected station's community of license; and

(4) Any application causing or receiving interference in an area that previously received interference-free service would be required to demonstrate the existence of at least five remaining aural services within each interference area.

We request comment on each of these factors, including whether the interference cap and gain/loss ratio strike an appropriate public interest balance. Should the Commission adopt additional or fewer restrictions? Should the Commission adopt separate service floor requirements for commercial and NCE FM stations?

10. If a rule change is adopted, applicants would be required to file coordinated facility modifications on the same date and clearly cross-reference all associated applications. A copy of the written consent of all stations receiving interference within their protected service contour as a result of proposed facility modification(s) would be submitted with the applications. Under this approach, we would amend Form 301 to require applicants to certify compliance with these negotiated interference standards and to submit supporting materials in exhibit form. We believe that careful review of interference-creating proposals filed pursuant to novel procedures would be particularly warranted. We seek comment on this conclusion and whether the Commission should rely on applicant certifications without supporting exhibits. All non-reserved band applications would be required to satisfy the less stringent § 73.215(e) spacing requirements and all construction permits granted to FM non-reserved band applicants would be granted as § 73.215 proposals. In addition, we would amend § 73.509 to prohibit second- and third-adjacent channel NCE FM stations from proposing transmitter sites within an affected station's 63 dBu contour. This would prevent interference areas deep within a station's service contour, and assure minimum distance separations between stations, thus promoting fair and equitable distribution of stations as required by section 307(b) of the Communications Act. We seek comment on whether this NCE FM restriction is necessary to prevent a deluge of modification applications that would shift service away from less well-served areas. All construction permits granted pursuant to these procedures would be conditioned on the simultaneous implementation of all related proposals. We invite comment on each aspect of this proposal.

11. To the extent that these procedures would result in the favorable consideration of applications that propose new areas of caused interference, they would also support changes in the way we treat interference received. New areas of received interference can result from a station's unilateral proposal to extend its own service contour so that it overlaps the interfering contour of an authorized station. In effect, such a proposal reflects a station's determination that increased potential listenership outweighs a certain amount of interference within its (expanded) service area. Typically, the new area of interference affects potential listeners who were not predicted to receive service previously. We seek comment on whether we should permit such modifications provided that an applicant demonstrates compliance with each of these requirements. However, no consent from any other station would be required where the proposal would not result in interference occurring within the service contour of any reserved band station, any § 73.215 station or any station operating with the equivalent of maximum class facilities. Applicants that propose a short-spacing to any other type of station would have to obtain consent from such affected station to receive interference. If the affected station chooses not to increase power simultaneously to a full-class facility as part of the agreement with the applicant, the affected station must request reclassification as a § 73.215 licensee/permittee. This "§ 73.215 condition" on the affected station's authorization effectively would limit that station to its current facilities (with regard to the applicant's proposal) and would prevent subsequent unilateral increases by the affected station resulting in interference caused to the applicant's improved facilities.

12. We seek comment on whether we should follow the methodology adopted in the recent grandfathered short-spaced FM station proceeding to determine areas of interference using the desired-to-undesired signal strength ratio analysis and the standard F(50,50) and F(50,10) propagation curves. *Grandfathered Short-Spaced FM Stations, Report and Order*, 62 FR 50518, September 26, 1997. As noted therein, the ratio method is the most appropriate method for determining areas of interference. We seek comments on this view. Cochannel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceeds a value 20 dB below the desired (protected) F(50,50) field strength. First-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage contour where the undesired (interfering) F(50,10) field strength exceed a value 6 dB below the desired (protected) F(50,50) field strength. Second- and third-adjacent channel interference would be predicted to exist at all locations within the desired station's coverage area where the undesired (interfering) F(50,10) field strength exceeds a value 40 dB above the desired (protected) F(50,50) field strength. We invite comment on these standards and the use of this methodology.

13. We believe that consideration is warranted in this document of the standards that would apply to waiver requests of the interference rules proposed herein. Section 73.215 codifies a relief mechanism for applicants to specify sub-standard spacings provided that certain criteria are met. If an applicant cannot meet these standards, then § 73.207 distance separation requirements must control. We propose to continue to follow this same procedure with regard to any interference-related rule changes adopted pursuant to this document. Specifically, in analyzing a request for waiver of § 73.215(e), we propose to measure the short-spacing in accordance with § 73.207 and to apply the traditional threshold three-part and public interest tests developed in § 73.207 jurisprudence. Similarly, with regard to interference-creating proposals between or among consenting broadcasters, the Commission would consider prohibited overlap in accordance with established precedent. In no event would such an applicant be entitled to a presumption that creating any interference—much less five percent—within any station's protected service contour would be in the public interest. We seek comment on these proposed waiver policies.

14. A broadcaster's obligations to accurately prepare each facility application, to truthfully complete each application certification, to construct and operate facilities in accordance with its authorization, and, generally, to adhere to the Commission's technical rules become particularly significant where stations may create small amounts of interference and where several facility modifications may be mutually interdependent. We are fully committed to exercising our plenary enforcement powers against applicants that enter into negotiated interference

agreements where we find that application showings and/or certifications have fallen short of Commission standards, regardless of the time at which the application errors are brought to the Commission's attention. In the event we adopt negotiated interference procedures for FM stations, we propose to publish, as necessary, decisions that explain or clarify these new procedures. We believe that a program that combines strict enforcement and broad information dissemination would promote full and candid disclosure of material technical information in applications and compliance with our rules and policies. We seek comment on this enforcement approach for negotiated interference agreements. We also request that commenters identify specific enforcement procedures that the Commission should follow and the sort of sanctions that it should impose where an applicant provides false or incomplete information in its application or where construction is at variance to an authorization.

15. We seek comment on whether this proposal to permit small amounts of interference in limited circumstances would protect service to a station's community of license and would help preserve an adequate service floor for all listeners. In particular, we invite public comment on the following issues to help develop a better record on the technical and policy issues that these proposals raise: (1) Would these negotiated interference procedures sufficiently protect the interests of listeners and licensees not party to an agreement?; (2) Could this proposal result in service losses to smaller communities and/or less desirable demographic audiences?; (3) Should negotiated interference agreements between commercial stations be treated differently from agreements between noncommercial educational stations?; (4) How might this proposal affect the development and implementation of in-band on-channel (IBOC) digital radio systems?; (5) Is there a danger that negotiated interference agreements over time may lead to less flexibility to make future changes when, for example, a transmitter site is lost and a station must relocate?; (6) Is there reason to believe that the accumulation of negotiated interference agreements over a period of years could lead to a general degradation of FM service in the United States?; (7) Is this negotiated interference proposal consistent with section 307(b) of the Communications Act?; (8) To what extent should the Commission rely on applicant certifications to ensure compliance with negotiated interference agreement requirements?; (9) Should the Commission require licensees to maintain negotiated interference agreements in their local public inspection files? Should they be filed with the Commission?; (10) Should the Commission limit agreements to one or several license terms? Should an agreement be terminable following the transfer of a station that previously consented to interference within its service contour?; (11) What remedies should the Commission and affected licensees have if a station breaches its negotiated interference agreement?

II. Other Proposals To Give Stations Greater Technical Flexibility

A. The Point-to-Point Prediction Methodology

16. *Background.* Interference between FM stations is defined in terms of protected and interfering contours. Because of the limited length (3 to 16 kilometers) of the radials used to determine antenna height above average terrain, the Commission's standard propagation methodology does not accurately account for all terrain effects. In 1975, the Commission adopted a limited correction factor to measure "terrain roughness" to overcome the effects of terrain beyond 16 kilometers.[5] However, the Commission later stayed the general use of the terrain roughness factor (contained in § 73.313 (f) through (j) and Figures 4 and 5 of § 73.333) because of difficulties with "atypical terrain configurations."[6] Presently, the Commission does not accept supplemental terrain analyses to determine predicted interference between FM stations. Thus, applications proposing new or expanded service may be precluded unreasonably where interference is predicted although, in fact, unlikely.

17. *Discussion.* In Appendix B of this document, we set forth a supplemental point-to-point ("PTP") prediction model which under many circumstances would provide for a more accurate prediction of interfering contours. We propose that an applicant may use the PTP method to calculate interfering contours for the purpose of demonstrating compliance with the Commission's various overlap/interference requirements.[7] Such showings would be limited to the relationships between the PTP predicted interfering contours and the affected station's standard F(50,50) curve predicted protected service contour. We also propose to permit the use of PTP methodology to demonstrate compliance with the interference area and population limits set forth above for negotiated interference agreements.

18. We tentatively conclude that applicants should be permitted to use the PTP methodology for certain other purposes. All commercial FM stations must demonstrate compliance with the community of license city grade coverage requirements of § 73.315. Since the PTP methodology more accurately incorporates the effects of terrain into the prediction of coverage, we propose to permit the use of PTP calculations by both applicants and objectors to resolve any questions raised regarding compliance with § 73.315 and to treat the PTP calculations as controlling. We propose to require applicants to submit a PTP contour study where terrain between a transmitter site and a community of license could put in issue either the use of the standard methodology or the station's compliance with city grade coverage requirements. Existing stations that currently cover their community based on the standard prediction method, but fail to satisfy the PTP methodology, would be exempt from a PTP determination provided they do not propose to relocate transmission facilities or withdraw coverage towards the community of license. Additionally, we propose to allow PTP methodology in two specific instances that require the calculation of 3.16 mV/m coverage: (1) compliance with main studio requirements of § 73.1125;[8] and (2) demonstration that an allotment, when

[5] *Field Strength Curves, Report and Order* in Dockets 16004 and 18052, 53 FCC 2d 855, 863 (1975).

[6] *Temporary Suspension of Certain Portions of Sections 73.313, 73.333, 73.684, and 73.699*, FCC 75–1226, 56 FCC 2d 749 (1975), *stay extended indefinitely*, 40 Rad. Reg. 2d 965 (1977).

[7] Specifically, we refer to interfering contours calculated in association with the Commission's overlap requirements for FM commercial, NCE FM, and FM Translator stations (47 CFR 73.215, 73.509, 73.1204, respectively); overlap of the interfering contours of intermediate frequency (IF) grandfathered short-spaced stations (§ 73.213(b)); and the interfering contours utilized in showings that involve undesired- to-desired (U/D) signal ratios in conjunction with FM to TV Channel Six interference showings (§ 73.525) and public interest showings related to pre-1964 grandfathered short-spaced stations (§ 73.213(a)).

[8] The staff currently entertains alternate prediction methods in the context of main studio locations. However, in order to warrant study, current commercial FM processing policy requires that such showings may be submitted if they alter the 3.16 mV/m contour by at least ten percent when compared to the standard prediction method. In contrast, the staff can efficiently confirm that an applicant has properly used the PTP methodology. Accordingly, we propose to eliminate the ten percent method for PTP contour studies that establish compliance with the Commission's main studio location rule.

considered at maximum Class facilities; would comply with § 73.315 with respect to the community of license (if use of a supplemental method is warranted consistent with existing precedents). We seek comment on these proposals.

19. The PTP methodology is proposed in this document for the primary purpose of demonstrating that the standard prediction method overstates the area encompassed by a station's interfering contour. Thus, we propose to prohibit the use of the PTP methodology to extend interfering contours beyond the standard F(50,10) predicted curves for the purpose of demonstrating harmful interference received. PTP showings are not permitted in any of our international agreements and thus could not be used to demonstrate compliance with international requirements. We also propose not to permit the use of this methodology to calculate protected service contours for the purposes of demonstrating: (1) the lack or existence of overlap; or (2) compliance or non-compliance with contour limitations for boosters, fill-in translators, or auxiliary facilities. In addition, we propose not to consider PTP showings in the context of demonstrating compliance with the multiple ownership requirements of § 73.3555. We seek comments on each aspect of this proposal regarding the adoption and use of the PTP methodology.

20. As noted above, we stayed the terrain roughness provision because of difficulties with atypical terrain configurations. However, this adjustment and the PTP prediction method would provide a more sophisticated and not unduly burdensome method of assessing the effects of a variety of terrain anomalies. Therefore, we propose to delete the long-stayed terrain roughness provisions from § 73.313(f) though (j) and Figure 4 of § 73.333 from the Commission's rules as they apply to FM broadcast stations. We seek comment on these proposals.

B. Commercial FM Technical Requirements: Amendments to § 73.215

i. Reduced Minimum Separation Requirements in § 73.215(e) for Second- and Third-Adjacent Channel Stations

21. *Background.* In 1989, the Commission adopted § 73.215 to afford FM applicants some additional flexibility in locating potential transmitter sites. In response to concerns of spectrum overcrowding, the Commission retained minimum but lesser spacing requirements for § 73.215 applicants. For second- and third-adjacent channel stations, § 73.215(e) generally limits the amount of relief from § 73.207 minimum distance separation requirements to no more than three kilometers and in some cases provides no relief.[9] As a result, stations with second-and third-adjacent channel spacing problems have, in many cases, less flexibility to relocate facilities under § 73.215(e) than under the former § 73.207 waiver policies that permitted the staff to grant spacing waivers of up to six kilometers.

22. *Discussion.* We propose to revise the § 73.215(e) spacing table to afford all FM commercial stations a minimum of 6 kilometers of relief from the applicable § 73.207(a) standards. We also propose that grants under this proposal would continue to be listed as a contour protection construction permit. We seek comment on these proposals.

ii. Additional Flexibility for Stations in Puerto Rico and the U.S. Virgin Islands

23. In 1993, the staff granted a request for waiver of § 73.215(a)(1) to permit an alternate method to define the protected and interfering contours of certain stations in the Virgin Islands and Puerto Rico.[10] We propose revising § 73.215 to incorporate the actual protected and interfering contours for Class A, B1 and B stations set forth in *St Croix Wireless Co.* The proposed modifications take into account the higher HAAT limits specified in the rules for Puerto Rico and the Virgin Islands, while affording stations additional site location flexibility. We believe that this revision would protect other stations from interference in excess of that which may occur under our spacing rules. We seek comment on this proposal.

[9] Specifically, out of 28 possible combinations between the second-and third-adjacent channel stations, § 73.215 provides 10 km relief to Class B1—C stations, and 9 km relief to Class C2–C stations. In addition, four combinations have 3 km of relief, 14 combinations have 2 km of relief, five combinations have 1 km of relief, and three combinations have no relief.

[10] *See St. Croix Wireless Co., Inc.*, 8 FCC Rcd 7329 (1993). In *St. Croix Wireless, Co.*, the permittee requested a waiver of § 73.215 as it defined the protected contour of a Class B station as the 54 dBu contour. The permittee demonstrated that use of the 54 dBu contour for Class B stations in Puerto Rico and the Virgin Islands produced an anomalous result, affording vastly more protection than the spacings provide. Instead, the permittee showed that given the spacings and maximum facilities permitted in this region, the normally protected contour of such stations is the 63 dBu contour, and the use of this contour for Caribbean stations produces a result equivalent to that on the mainland.

C. New Class C Height Above Average Terrain Requirements

24. *Background.* A recent staff study reveals that many Class C stations operate with facilities that are significantly less than maximum. Specifically, the study reveals that 519 of the 863 FM stations presently occupying Class C assignments, or approximately 60 percent, operate with facilities less than 450 meters HAAT. The fact that such a large percentage of Class C stations are operating more than 150 meters below one-half the maximum antenna height limitation of 600 meters HAAT indicates that the Commission's present allotment structure overprotects a substantial number of Class C stations and, therefore, may unnecessarily preclude proposals to introduce new and/or expand existing services.

25. *Discussion.* We propose to create an additional intermediate class of stations between Class C and Class C1, to be designated Class C0 (Class C zero). Class C0 stations would have a maximum height limitation of 450 meters HAAT and a minimum antenna height requirement of 300 meters HAAT. Both classes of stations would be required to maintain a power level of 100 kW, the present value for Class C stations. Under this proposal, Class C stations would be required to operate at a minimum antenna height of no less than 451 meters HAAT. We would amend the FM distance separation tables to include the reduced spacing requirements for the new station class. In order to provide a reasonable opportunity for existing Class C stations not operating at the proposed antenna height minimum to maintain their full Class C status, we propose a three-year transition period to obtain a construction permit specifying an antenna HAAT of at least 451 meters. During the three-year period, each such station would be renewed on a conditional basis. If the station has not obtained the necessary authorization within the three-year period, then the station would be reclassified as a Class C0 station. We seek comments regarding this proposal, including comments that may shed light on the additional service the proposed additional station class could create, the effect of the loss of primary service areas for reclassified Class C0 stations, and whether creation of a temporary "buffer zone" to protect the ability of existing Class C stations to upgrade during the three-year transition period would be appropriate.

D. Streamlined Application Processing Changes

i. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications

26. *Background.* Under our present rules, minor change applications for non-reserved FM band broadcast stations are subject to "first come/first served" processing, whereby a first-filed application cuts off the filing rights of subsequent, mutually exclusive proposals. Minor changes for AM, reserved FM band and FM translator stations do not receive such cut-off protection, but remain subject to competing proposals until the staff disposes of the applications. This policy imposes significant uncertainty and delay on minor change applicants in these services: at any time during the pendency of an application, a conflicting proposal may be filed that could halt further processing of the application and necessitate a technical amendment, settlement between the parties or designation of the mutually exclusive applications for comparative hearing.

27. *Discussion.* We propose to extend application of the first come/first served processing system to AM, NCE FM and FM translator minor change applications. We believe that the unlimited exposure to conflicting applications and the concomitant expense and delay under the current policy is both inequitable and inconsistent with our treatment of minor changes for FM commercial band stations. We anticipate that this proposal would effectively remedy the uncertainty and delay presently associated with AM, NCE FM and FM translator minor change applications. We invite comment on this proposal.

ii. Revisions to the Definition of "Minor" Change in AM, NCE FM, and FM Translator Services

28. *Background.* Under our present rules, a proposed change in the facilities of an existing commercial FM band station is classified as a major change only if it involves a change in community of license and/or certain changes in frequency and/or class. For AM, NCE FM and FM translator stations, however, various other facility changes also are classified as major changes: (1) for AM stations, most proposed increases in power; (2) for NCE FM stations, any proposed change of 50 percent or more in the station's predicted 1 mV/m (60 dBu) coverage area; and (3) for FM translators, any proposed change or increase of over 10 percent in the 1 mV/m coverage area. Accordingly, facility modification applications in these services may be subject to additional administrative procedures.

29. We propose to expand the definition of minor change for the AM, NCE FM and FM translator services to conform to the commercial FM "minor change" definition. Thus, only applications to change community of license and to change to a non-mutually exclusive channel and class would be classified as "major" changes.[11] To prevent NCE FM and FM translator stations from abandoning their present service areas, however, we propose to require these stations to continue to provide 1 mV/m service to some portion of their presently authorized 1 mV/m service areas in order for their applications to be classified as minor changes. We tentatively conclude that this proposal would eliminate the present inconsistent treatment of proposed facilities increases for different radio services without undermining the administration of any Commission rule or policy. We invite comment on this proposal.

iii. Coordinate Corrections by Single Application for Licensed Stations

30. *Background.* Presently, broadcast stations seeking to correct coordinates must file a construction permit application, and after grant, a license application.[12] Coordinate corrections, however, are generally considered to be minor changes to broadcast facilities because they do not involve physical changes to the facilities or a change in licensed parameters. We believe that for many coordinate corrections the two-application procedure is unduly burdensome.

31. *Discussion.* We propose to adopt new provisions in Parts 73 and 74 to allow corrections of coordinates for broadcast facilities, where no other licensed parameters are changed, via a single license application. We also propose to require the applicant to certify that all licensed parameters not altered in the license application would remain unchanged. Under our proposal, the applicant would not be required to file a separate construction permit. We propose to make this procedure available where the correction would be less than 3 seconds latitude and 3 seconds longitude, provided that the applicant has sought FAA clearance and antenna structure registration.[13] We seek comment on this proposal and whether an alternative standard should be adopted. We also propose to continue our policy of issuing public notices announcing the receipt of the application, and the processing of the coordinate correction as if it were a routine minor change application. However, in the event the coordinate correction establishes a violation of our technical rules, the Commission would retain a full range of options including the designation of the license application for hearing and the issuance of an order to show cause why the construction permit should not be revoked. We propose to require any permittee that discovers an antenna structure coordinate error to file an application to modify its outstanding construction permit. We tentatively conclude that the Commission may adopt this change in licensing procedures pursuant to section 319(d) of the Communications Act. We seek comment on these proposals.

iv. FM Translator and Booster Station Power Reductions by Single Application

32. *Background.* We have found when reviewing license renewals that many FM translator and booster stations are actually operating at a power less than that specified in their license. In order to authorize the reduced power operation, we now require licensees to go through the two-step process. In addition, FM translator licensees may resolve an interference complaint by a reduction in power. In this instance, the two-step process delays the resolution of the interference problem.

33. *Discussion.* In order to expedite FM station license modifications in these circumstances, we propose to eliminate the two-step application process for FM translator and booster stations seeking to decrease ERP. We tentatively conclude that recent changes

[11] We propose to continue to treat AM applications to change from Class B to Class D as "minor" changes.

[12] *See* 47 CFR 73.1690(b)(2) and 73.3536.

[13] In 1996, the Commission received comments in response to the *Notice of Proposed Rulemaking* in MM Docket 96–58 requesting that a rule be adopted to allow a coordinate correction in a modification of license application, thereby eliminating the requirement for a construction permit. *See Certain Minor Changes in Broadcast Facilities Without a Construction Permit, Notice of Proposed Rulemaking,* 61 FR 15439, April 8, 1996. The Commission denied the request stating that the proposed one-step procedure could invite abuse by applicants "correcting" coordinates to a short-spaced transmitter site or a site involving prohibited contour overlap. By retaining the construction permit process, the Commission indicated that the safeguards against abuse inherent in the construction permit process would be not be lost. *See Certain Minor Changes in Broadcast Facilities without a Construction Permit, Report and Order,* 62 FR 51052, September 30, 1997. We now believe that limiting one-step license application coordinate corrections to situations involving less than 3 seconds of longitude and latitude would provide adequate safeguards. We seek comment on this conclusion.

in section 319 of the Communications Act permit the Commission to adopt this one step licensing procedure.[14] We seek comment on this view. In these instances, we would permit licensees to decrease their ERP after the filing of a license application proposing the power decrease. We seek comment on this proposal.

E. Relaxed NCE FM and Translator Technical Requirements

i. Second-Adjacent Channel Interference Ratios for Predicting Prohibited Overlap in the Reserved Band

34. *Background.* The Commission's commercial FM station interference protection standards require stations operating on the same channel or any of the first three adjacent channels to meet certain minimum distance standards. Like commercial FM stations, NCE FM stations are protected from interference by stations operating on co- and the first three adjacent channels under the rules. The NCE FM rules do not specify minimum distance separation requirements. Actual, rather than maximum class facilities are used to calculate whether prohibited contour overlap would occur. Thus, the location of a station's service and interfering contours determines the preclusionary impact of such stations on other potential cochannel and adjacent channel facilities. Although both commercial and NCE FM interference standards are derived from a common methodology, the commercial rules use a less preclusive 100 dBu interfering contour to calculate minimum distance separations for stations operating on second-adjacent frequencies.

35. *Discussion.* We propose to eliminate the inconsistency between the commercial and NCE FM station interference protection standards. Specifically, we propose to modify §§ 73.509 and 74.1204(a) to specify a 100 dBu interfering contour for second-adjacent channel NCE FM and FM translator stations.[15] We seek comment on this proposed rule change.

ii. Minimum Coverage of the Community of License by NCE FM Stations

36. *Background.* The Commission's rules do not require NCE FM stations operating in the reserved band (Channels 201 to 220) to place a minimum field strength signal over their communities of license, unlike their commercial counterparts. The Commission enacted this policy based on the fact that many NCE FM stations operate at low power levels and simply could not provide coverage to the entire area within the legal boundaries of its community of license. The Commission also recognized that NCE FM stations are generally dependent on listener support, and may not have the financial resources to construct facilities that serve the entire community of license. However, public interest concerns are raised where an NCE FM station covers *no* portion of its community of license with its 60 dBu contour. The association of a broadcast station with a community of license is a basic tenet of the Commission's allocation scheme for broadcast stations.

37. *Discussion.* We propose to delete the Note to § 73.315(a) and to add a provision requiring NCE FM stations to provide 60 dBu (1 mV/m) service to at least a portion of the community of license. We believe this proposal would give NCE FM applicants significant flexibility to locate technical facilities, consistent with the Commission's statutory licensing requirements. We seek comment on this proposal and on the percentage of the population and/or area of the community that should be covered. In the event that an NCE FM community coverage standard is adopted, we propose to apply the rule only to new station and modification applications filed after the effective date of this new rule. We seek comment on these tentative conclusions.

iii. Revisions to Class D Rules

38. *Background.* The Commission created a low power NCE FM Class D service in 1948, as an inexpensive means of encouraging the FM broadcasting service and as a substitute for the "campus broadcasting systems" then in use. By 1976, however, the demand for NCE FM licenses had increased dramatically, prompting the Commission to initiate a rule making proceeding to determine how to foster the most effective use of NCE FM spectrum. The Commission concluded that Class D stations constituted an inefficient use of spectrum, and adopted measures to minimize their negative impact on the development of the NCE FM radio service. Specifically, the Commission encouraged Class D stations to upgrade to Class A status. It required Class D stations that did not upgrade to migrate to a commercial FM channel or Channel 200, where they would have secondary status. Those stations unable to migrate would be required to move to the reserved band channel with "the least preclusionary impact on other potential stations[.]" In addition, the Commission ended Class D stations' protection against interference and imposed a permanent freeze on applications for new Class D stations.[16]

39. The Commission remains committed to promoting the full use of the NCE FM channels. Congestion in the reserved band has increased during the past twenty years, and demand for NCE FM licenses remains high. Furthermore, a recent staff study reveals that a number of the remaining Class D stations with reserved band authorizations are causing interference to full service NCE FM stations.[17] We believe, therefore, that certain modifications to our Class D policies are appropriate. We anticipate that the changes proposed herein would serve the Commission's original objective while avoiding the unnecessary cancellation of Class D licenses. In addition, we believe that the proposed changes would simplify and expedite Class D station licensing and renewal procedures.

40. *Discussion.* Under § 73.512(a), Class D stations are required with each renewal cycle to migrate to an available commercial channel or Channel 200, or demonstrate the unavailability of such channels. We do not believe the administrative burdens these requirements impose on both licensees and the Commission staff are warranted where an existing Class D station is operating on an NCE FM channel without objectionable interference. Accordingly, we propose to permit Class D stations to operate on any channel where no interference (as defined by § 73.509(b)) would be caused to any broadcast station, and to eliminate the requirement that Class D licensees with reserved band authorizations demonstrate the unavailability of any commercial FM channel or Channel 200 in their license renewal applications. Under this proposal, the staff would handle channel location issues as they arise rather than addressing them as license renewal issues. Furthermore, whereas the current rules require Class D stations to migrate to available

[14] In 1996, Congress amended section 319 of the Act to authorize the Commission to waive the requirement for a construction permit for minor changes in the facilities of authorized broadcast stations. *Telecommunications Act of 1996*, Pub. L. No. 104–104, § 403(m), 110 Stat. 56 (1996).

[15] The 97 and 94 dBu interfering contours will be specified for second-adjacent channel FM translator stations protecting class B1 and B stations in the reserved band, respectively.

[16] This notice neither makes nor proposes any change to this permanent freeze policy. We note that the Commission has requested public comment on two rulemaking petitions to establish a low power or microbroadcasting service. *See Public Notice*, Report No. 2254 (released February 5, 1998) (RM # 9208); *Public Notice*, Report No. 2262 (released March 12, 1998) (RM # 9242) (erratum).

[17] The study reveals that 38 of the 70 Class D stations with reserved band licenses are causing interference.

commercial channels or Channel 200 and contain no provision for such stations to move back to the reserved band, the proposed new rules would allow existing Class D stations to relocate to any available interference-free reserved or nonreserved channel in order to avoid receiving interference from full power FM stations, or for any other reason.

41. With regard to Class D stations that are causing or are predicted to cause interference (as defined by § 73.509(b)) on their current channel, we propose to apply the following standards: first, stations would be required to move to an available interference-free channel; second, if no interference-free channel is available, stations would be required to move to an NCE FM channel that would result in only second- and/or third-adjacent channel contour overlap; [18] and third, if no channel is available that would be either interference-free or create only second-and/or third-adjacent channel interference, the station would be required to obtain the consent of each affected NCE FM station subject to co- or first-adjacent channel interference as a condition for continued operation. Should there be a number of potential channels for an existing Class D station in this situation to choose from, we propose to require applicants to adhere to the following frequency selection criteria: first, we would prefer overlap beyond an affected station's community of license to overlap within the licensed community; second, we would prefer third to second adjacent channel overlap; and third, we would prefer overlap involving the smallest percentage of population in a station's coverage area, so that there would be the least possible adverse impact on the affected station. In conjunction with these changes, we also propose to eliminate the "least preclusion" requirement, which is inadequately defined in the existing rules and has proved impracticable. With regard to Class D stations presently causing second or third adjacent channel overlap in the NCE FM band, we invite comment as to whether such stations should be allowed to remain on their present channels absent actual complaints of interference or required to move in accordance with the standards proposed herein.

42. A recent staff study reveals that every Class D station authorized to operate on a reserved band frequency has available at the present time an NCE FM channel on which it could operate free of co- or first-adjacent channel contour overlap. However, in the event that changes in NCE FM authorizations create a situation where no channel free of co- and first-adjacent channel interference is available, we propose to require the Class D station to obtain the consent of the affected NCE FM station(s) as a condition for continued operation.[19] In the event that no agreement is reached, the Class D station would be required to cease operation when program tests for the affected station commence, and would have up to one year to obtain the required consent.

43. *Revise Class D Definition Based on Transmitter Power Output.* The current rules define Class D stations as stations with transmitter power output ("TPO") of 10 watts or less. Higher class NCE FM stations, however, are defined by their predicted 1 mV/m (60 dBu) contour distances, as determined by power and antenna height in accordance with § 73.211(b). We propose to conform the definition of Class D stations to that of higher class NCE FM stations, by eliminating the TPO restriction and instead defining Class D stations as stations with predicted 60 dBu contour distances not exceeding five kilometers, as determined in accordance with § 73.211(b). We are aware of five Class D stations with predicted 60 dBu contour distances exceeding the proposed five kilometer restriction. We propose to grandfather such "superpowered" Class D facilities, permitting them to continue to operate as Class D stations at their present power and antenna height and to modify their facilities provided they do not extend their predicted 60 dBu contour distances.[20]

44. *Classify Construction Permit Applications as Minor Changes.* Certain Class D construction permit applications, including those proposing operation on a new channel, are treated as major change applications. We propose to consider all Class D facility applications as minor change applications that would be processed under our more efficient "first come/first served" procedures. In light of the unprotected status of Class D stations, only other Class D applications would be affected by this proposal, and mutually exclusive Class D applications are extremely unlikely due to the low power and relatively small number of Class D stations. By eliminating the 30-day public notice period for Class D permit applications, we anticipate that this proposal would expedite processing of such applications, conferring an important benefit on displaced Class D stations.[21] Consistent with the above, we propose to permit Class D stations to propose changes of licensed community or of 50 percent or more of the area within their predicted 1 mV/m contour areas provided their applications demonstrate that they would maintain continuity of service to their core audience. The present rules prohibit such changes in order to prevent the establishment of "new" Class D stations. We seek comment on these proposals.

45. *Revise Contour Protection Requirements for Class B and B1 Stations.* Section 73.509(b) requires Class D stations to protect the 1 mV/m (60 dBu) contour of all other broadcast stations, regardless of class or location on the FM band. Commercial Class B and B1 FM stations, however, traditionally have received greater protection to their 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu) contours, respectively. Accordingly, we propose to modify § 73.509(b) to require Class D stations to protect commercial Class B and B1 stations, as well as NCE FM Class B and B1 stations operating on commercial channels, to their respective 54 dBu and 57 dBu contours. We invite comment as to whether Class D stations that currently are required to protect the 60 dBu contours of Class B or B1 stations but would not comply with the proposed new standard should be permitted to continue to operate at their present powers and antenna heights absent actual interference complaints.

46. We invite comment on these Class D station proposals. Are they warranted in the interest of improved NCE FM channel use? Would they promote more efficient use of NCE FM channels? Should we apply to Class D stations the "actual interference" standard applicable to FM translators? Would the proposed changes sufficiently protect the ability of Class D stations to continue to operate?

[18] The current rules define Class D stations operating in the non-reserved band as "secondary," and we propose no change in this definition. *See* 47 CFR 73.506(a). For purposes of this Class D channel displacement discussion, Channel 200 is treated as an NCE FM channel.

[19] We would allow Class D licensees to obtain such consent not only for the channel they are currently operating on but for any NCE FM channel or Channel 200.

[20] In this regard, we also propose to grandfather "underpowered" Class A facilities: Class A stations authorized prior to the adoption of the Class A minimum power and antenna height requirements in § 73.511 which do not meet such requirements. 47 CFR 73.211(a)(3). In practice, such stations currently are treated as Class A facilities.

[21] We invite comment as to whether an application by a Class D station proposing to upgrade to Class A status should be classified as a major change. Arguably, a Class D to A upgrade should be classified as a major change because it would confer protected status on the subject station.

III. Procedural Matters

47. *Paperwork Reduction Act.* This Notice proposes rule and procedural revisions that may contain information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public and other federal agencies are invited to comment on the information collection requirements proposed in this proceeding. Public and agency comments are due at the same time as other comments in this Notice; OMB comments are due August 21, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements proposed herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

48. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

49. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice.

A. Need for and Objectives of the Proposed Rules

50. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of certain technical rules and policies governing the radio broadcast services.

B. Legal Basis

51. Authority for the actions proposed in this Notice document may be found in sections 4(i), 4(j), 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

52. RFA generally defines the term "small entity " as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[22] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."

53. The proposed rules and policies will apply to radio broadcasting licensees and potential licensees. The Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. As of January 31, 1998, official Commission records indicate that 12,241 radio stations were operating, of which 7,488 were FM stations. Thus, the proposed rules will affect some of the 12,241 radio stations, approximately 11,751 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

54. In addition to owners of operating radio stations, any entity who seeks or desires to obtain a radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a radio broadcast license is unknown. We invite comment as to such number.

D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

55. In addition to enhancing opportunities for improvement of radio broadcast technical facilities and service, a number of the measures proposed in this notice document would reduce the reporting required of prospective and current applicants, permittees and licensees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

56. This notice document solicits comment on a variety of alternatives discussed herein. These alternatives are intended to enhance opportunities for improvement of technical facilities and service and eliminate unnecessary administrative burdens and delays associated with our radio broadcast licensing processes. Any significant alternatives presented in the comments will be considered.

[22] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**" 5 U.S.C. 601(3). While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio stations, for purposes of this document, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations subject to the proposed rules in this document and to consider further the issue of the number of small entities that are radio broadcasters or other small media entities in the future.

F. Federal Rules that Overlap, Duplicate, or Conflict With the Proposed Rules

57. None.

Ordering Clauses

58. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 4(i), 4(j), 303, 308, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 308, 309 and 310, this Notice of Proposed Rule Making and Order is adopted.

List of Subjects

47 CFR Part 73

Radio, reporting and recordkeeping requirements.

47 CFR Part 74

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–16514 Filed 6–19–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Endangered Status and Notice of Availability of the Draft Conservation Agreement for Review and Comment for Pediocactus winkleri (Winkler cactus) in Central Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list *Pediocactus winkleri* (Winkler cactus) as endangered, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal and any new information. In addition, the Service announces the availability of a draft conservation agreement for *Pediocactus winkleri*, also for public comment. This conservation agreement is accessible on the internet at www.blm.gov\utah.

DATES: The comment period on this proposal and draft conservation agreement is extended until July 22, 1998.

ADDRESSES: Written comments and materials concerning the proposal and draft conservation agreement should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1993, the Service proposed to add *Pediocactus winkleri* (Winkler cactus) to the list of endangered and threatened plants (58 FR 52059). At that time *Pediocactus winkleri* was known from six populations with a total population of about 3,500 plants with a range in central Utah from near Notom in central Wayne County to near Fremont Junction in southwestern Emery County.

Since the closing of the comment period on December 6, 1993, an additional population has been discovered near Ferron in western Emery County, Utah. In addition, additional plants have been documented within previously known populations. While the documented numbers of the species have increased little over the 1993 estimates, the Service now estimates that the population may number up to 10,000 plants (Fish and Wildlife Service 1994, 1997). The Bureau of Land Management and the National Park Service initiated a comprehensive inventory of the species within its potential habitat in the spring of 1998.

The Species continues to be exploited by cactus collectors. In 1984, the Service established a population monitoring transect for *P. winkleri* in an easily accessible area that cactus collectors frequent (Fish and Wildlife Service 1994, 1997). The Service has periodically monitored this transect, usually at 2-year intervals. The P. winkeri population along this transect declined from 53 plants 1984 to zero plants in 1997. The Notom population's estimated size has declined from about 2,000 individuals in 1984 (Heil 1984) to an estimated 700 individuals in 1997 (Fish and Wildlife Service 1997). The Service during its 1997 survey of the Notom population discovered several shovel marks within the occupied habitat of this species. These marks were at the locations of plants last observed in 1994 and missing in 1997. Threats to species and its habitat, from off-highway vehicles, mining and quarrying, oil and gas drilling, and livestock trampling, continue with varying significance throughout the species range (Fish and Wildlife Service 1997).

A moratorium on listing actions (Public Law 104–6) took effect April 10, 1996, and prevented the Service from making a final decision on this proposal by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a **Federal Register** document published on May 16, 1996 (61 FR 24722), the Service outline in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of the final rule for this proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 16, 1996, **Federal Register** notice.

The Service does not believe that the new distributional and population information has changed the status of the species. However, we are reopening the comment period on the proposed rule to solicit comments on this new information and request any additional information on scientific studies conducted since the comment period last closed on December 6, 1993.

The Draft Conservation Agreement was developed by the Bureau of Land Management, in coordination with the Park Service, Forest Service, and the Service. The agreement focuses on identifying, reducing and eliminating significant threats to *Pediocactus winkleri* (and *P. Despainii*, a listed species) that warrant its candidate status, and on enhancing and maintaining the species population to ensure its long term conservation. The Service also is seeking comments on the adequacy of the proposed conservation agreement and whether or not the agreement will satisfactorily provide for the species conservation independent of the Endangered Species Act. The Service hereby announces reopening of the comment period until July 22, 1998.

References Cited

Heil, K.D. 1984. Status report on *Pediocactus winkleri*. U.S. Fish and Wildlife Service, Denver, Colorado. 14 pp.

U.S. Fish and Wildlife Service. 1994. *Pediocactus winkleri* status report supplement. Salt Lake City, Utah. 12 pp.

U.S. Fish and Wildlife Service. 1997. *Pediocactus winkleri* status report supplement 2. Salt Lake City, Utah. 11 pp. + append.

Author: The primary author of this notice is John L. England (see **ADDRESSES** above).

Authority.

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 15, 1998.

Terry T. Terrell,

Deputy Regional Director, Fish and Wildlife Service.

[FR Doc. 98–16500 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 63, No. 119
Monday, June 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

Submission for OMB Review; Comment Request

June 17, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology would be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Farmers' Market Nutrition Program (FMNP) Annual Financial Report, FMNP Recipient Report and FMNP.

OMB Control Number: 0584–0447.

Summary of Collection: The WIC Farmers' Market Nutrition Program (FMNP) is authorized by Public Law 102–314, enacted on July 2, 1992. The purpose of the FMNP is to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and, to increase sales at such markets. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

Need and Use of the Information: FNS will collect information from state agency administering the FMNP to develop an annual financial report on the number and type of recipients served by both Federal and non-Federal benefits under the program. The information is necessary for reporting to Congress in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for program planning purposes.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit.

Number of Respondents: 1,283.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 4,086.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–New.

Summary of Collection: The Food Security Supplement is sponsored by the Economic Research Service (ERS) as a research and evaluation activity authorized under Section 17 of the Food Stamp Act of 1977. ERS is collaborating with the Food and Nutrition Service (FNS) and the Bureau of Census to continue this program of research and development. The Food Stamp Program (FSP) is currently the primary source of nutrition assistance for low-income Americans enabling households to improve their diet by increasing their food purchasing power. As the nation's primary public program for ensuring food security and alleviating hunger, USDA needs to regularly monitor these conditions among its target population. The Food Security Supplement will be administered as a set of questions appended to the Current Population Survey (CPS) managed by the Bureau of Census.

Need and Use of the Information: ERS will collect information from the Current Population Survey Food Security Supplement to routinely obtain reliable data from a large, representative national sample in order to develop a measure that can be used to track the prevalence of food insecurity and hunger within the U.S. population, as a whole, and by important population subgroups. The data collection will partially fulfill the requirements of the Congressionally mandated 10-Year Plan for the National Nutrition Monitoring and Related Research Program (NNMRRP). It will also contribute to provisions of the Government Performance Review Act (GPRA) by allowing FNS to quantify the effects and accomplishments of the Food Stamp Program.

Description of Respondents: Individuals or households.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,667.

Agricultural Marketing Service

Title: Poultry Market News Report.

OMB Control Number: 0581–0033.

Summary of Collection: The Agricultural Marketing Act of 1946, legislates that USDA shall "* * * collect" and "disseminate marketing information * * * "and" * * * collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof." The Agricultural Marketing Service (AMS), on behalf of the Secretary of Agriculture, is directed and authorized to collect and disseminate marketing information, including

adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products. Information is collected from trade members covering 86 markets and 64 poultry commodity items to prepare the monthly report.

Need and Use of the Information: Government agencies such as the Foreign Agricultural Service, Economic Research Service, and the National Agricultural Statistics Service use market news data. Market News Reports are an aid to these government agencies in tracking prices, wages, and productivity or as indicators of economic activity. Market news information is contained in published reports distributed by other government agencies; for example, the "Situation and Outlook" reports by the Economic Research Service. The poultry and egg industry uses the data to help determine future production and marketing projections. Additionally, educational institutions, specifically, agricultural colleges and universities use market news information. The absence of these data would deny primary and secondary users' information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: .Business or other for-profit.

Number of Respondents: 1,720.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 17,657.

Agricultural Marketing Service

Title: Seed Service Testing Program.

OMB Control Number: 0581–0140.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 and regulations 7 CFR 75, thereunder provide for the inspection and certification of the quality of agricultural and vegetable seeds in order to bring about efficient orderly marketing and to assist the development of new or expanding markets. Under the voluntary program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for certain quality factors such as purity, germination, and noxious-weed seed content. The items for which the seed is tested are designated by the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS which tests the seed and issues the certificates is the only Federal seed testing facility which can issue the Federal Seed Analysis Certificate.

Need and Use of the Information: Generally, applicants are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment if present, along with a sample of seed in order for AMS to provide the service. The information provided by the applicant is included on the seed analysis certificate, often to satisfy requirements of importing countries or letters of credit. If the pertinent information is not collected AMS would not know which tests to conduct or would not be able to relate the test results with a specific lot of seed. The information must be provided for each sample the applicant submits for test. Without the AMS program, applicants would have to obtain tests from state or commercial laboratories.

Description of Respondents: Business or other for-profit; Farms; State, Local, or Tribal Government.

Number of Respondents: 92.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 389.

Farm Service Agency

Title: Highly Erodible Land and Wetland Conservation Certification Requirements, 7 CFR Part 12.

OMB Control Number: 0560–NEW.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture , conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetlands and to reduce the rate at which the conversion of highly erodible land occurs. In order to ensure that persons who request benefits subject to the conservation restrictions get technical assistance needed and are informed regarding the compliance requirements on their land, the Farm Service Agency (FSA) collects information from producers with regard to their intended activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additionally, information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 400,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 109,477.

Food and Nutrition Service

Title: Coordination Best Practices Handbook project.

OMB Control Number: 0584–NEW.

Summary of Collection: The special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was established in 1972 through an amendment to the Federal Child Nutrition Act. Its purpose is to provide low-income pregnant, breastfeeding, and postpartum women, infants and children up to age 5 with supplemental foods, nutrition education, and health care referrals to counteract the adverse effects of poverty on their nutrition and health status. The FNS is planning to conduct two consecutive information collections to determine best practices in coordinating WIC services with primary care services. From this information, a Best Practices Handbook will be prepared. The information will be collected through telephone screening and in-depth interviews with key informants.

Need and Use of the Information: FNS will use the information gathered in the study to develop a Best Practices Handbook. The handbook will provide information about collocation, collaboration and integration efforts, which will be distributed to state and local WIC, Community/Migrant Health Centers, and Indian Health Service directors. It is designed to motivate agency directors to move ahead with concrete plans that will results in improved coordination between their collective programs, thereby increasing access for women and children to the benefits available from all three programs.

Description of Respondents: State, Local, or Tribal Government; Not-for-profit institutions; Federal Government.

Number of Respondents: 270.
Frequency of Responses: Reporting: Other (One time).
Total Burden Hours: 195.

Food and Nutrition Service

Title: Case Study Data Collection for Tracking State Food Stamp choices and Implementation Strategies Under Welfare Reform.
OMB Control Number: 0584–NEW.
Summary of Collection: The Food Stamp Program, administered by the Food and Nutrition Service (FNS), is a major components of the nation's nutrition security strategy and a central element of America's antipoverty efforts. With the enactment of the new Federal welfare reform law, States have been given many more policy options in the way they administer the Food Stamp Program. FNS is conducting a two-part study to collect information regarding innovative local implementation of State Food Stamp Program choices. The first phase of this study was completed in December 1997. This proposed collection represents the second phase where information will be collected through qualitative interviews with State and local food stamp officials in up to 10 states. Information will be gathered on changes in State food stamp policy decisions, how these changes are being implemented, and, if available, the number of food stamp participants affected by individual provisions.
Need and Use of the Information: The information collected should help FNS understand more about how States make choices regarding implementation strategies and how successful the implementation policies have been in helping clients move from welfare to work. FNS also hopes to gain insight into how various State policy choices have been translated into changes in local office practices and where and how the Food Stamp Program most succeeds in embodying the goals of welfare reform.
Description of Respondents: State, Local, or Tribal Government; Not-for-profit institutions.
Number of Respondents: 285.
Frequency of Responses: Reporting: Other (One time).
Total Burden Hours: 350.

Animal and Plant Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.
OMB Control Number: 0579–0013.
Summary of Collection: To fulfill its mission of preventing the importation, preparation, sale, or shipment of harmful veterinary biological products, the Veterinary Biologics Division of USDA's Animal and Plant Health Inspection Service (APHIS) issues licenses to qualified establishments that produce biological products, and issues permits to importers seeking to import such products into the United States. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms, and field study summaries.
Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing.
Description of Respondents: Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 115.
Frequency of Responses: Recordkeeping, Reporting: On occasion.
Total Burden Hours: 71,547.

Agricultural Marketing Service

Title: Federal Seed Act Program.
OMB Control Number: 0581–0026.
Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.
Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by AMS program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.
Description of Respondents: Business or other for-profit; Farm; State, Local or Tribal Government.
Number of Respondents: 3,208.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 36,793.

Agricultural Marketing Service

Title: Reporting Requirements Under the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.
OMB Control Number: 0581–0126.
Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), Title II, Section 202 states, "The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the nation. The Government, industry, and the consumer will be well served if the Government can help insure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are being requested.
Need and Use of the Information: The information requested is used to identify the product offered for grading, to identify and contact the party responsible for payment of the grading fee and expense, to identify persons who are responsible for payment of the grading fee and expense, and to identify persons who are responsible for administering the grade label program. Only information essential to provide service is requested. AMS uses several forms to collect information that is essential to carrying out and administering the inspection and grading program.
Description of Respondents: Business or other for-profit.
Number of Respondents: 131.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 383.

Agricultural Marketing Service

Title: Cotton Classification and Market News Service.

OMB Control Number: 0581–0009.

Summary of Collection: The Cotton Statistics and Estimates Act, 7 U.S.C. 471–476, authorizes and directs the Secretary of Agriculture and Agricultural Marketing Service (AMS), to collect and publish annually, statistics or estimates concerning the grades and staple length of stocks of cotton, known as the carryover, on hand on the 1st of August of each year in warehouses and other establishments of every character in the continental U.S.; and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471). Additionally, AMS collects, authenticates, publishes, and distributes by telegraph, radio, mail, and otherwise, timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B).

Need and Use of the Information: AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. This is information that is needed and used by all segments of the cotton industry. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. In addition, other USDA agencies use the information on carryover stocks for calculating accurate projections and estimates used in policy decisions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 495.

Frequency of Responses: Reporting: On occasion; weekly; annually.

Total Burden Hours: 218.

Farm Service Agency

Title: Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—7 CFR Part 1951.

OMB Control Number: 0560–0160.

Summary of Collection: The Farm Service Agency (FSA) farm loan programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT) [P.L. 87–128]. Occasionally, FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in program regulations or where the borrower qualified for loan assistance but a subsidized interest was charged on the loan, resulting in receipt of unauthorized interest subsidy benefits. The assistance may also be loan servicing where a borrower received an excessive write down or write-off of their debt. The information collected under the provisions of this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan.

Need and Use of the Information: The information to be collected by FSA will primarily be financial data such as amount of income, farm operating expenses, crop yields, etc. The borrower will provide written records or other information to refute FSA's finding when it is determined through audit or by other means that a borrower has received financial assistance to which he or she was not entitled. If the borrower is unsuccessful in having the FSA change its determination of unauthorized assistance, the borrower may appeal the FSA decision. Otherwise, the unauthorized loan recipient may pay the loan in full, apply for a loan under a different program, convey the loan security to the government, enter into an accelerated repayment agreement, or sell the security in lieu of forced liquidation.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 420.

National Agricultural Statistics Service

Title: Trade Association Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The National Agricultural Statistics Service (NASS) has been asked by the Foreign Agricultural Service (FAS) and the U.S. Agency for International Development (USAID) to conduct a survey of U.S. agricultural producer and commodity trade associations. This survey is designed to determine the degree that agricultural trade associations and other associations and organizations who support agriculture and the broader food and fiber economy participate in or facilitate international marketing, foreign direct investment, agricultural research and development, and food safety related activities. NASS will collect information using a survey.

Need and Use of the Information: NASS will ask for information about steps the organizations have taken, are taking, or may be thinking of taking to help their organization members become more competitive in the emerging global economy. The data collected are vital to helping USAID formulate programs to foster agricultural trade that is mutually beneficial to agricultural producers and consumers in the U.S. and in the rest of the world. The USAID/Economic Research Service will analyze the data to determine the extent that the trade associations encourage international trade and the extent to which they use U.S. government information in determining trading partners and investment opportunities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 706.

Frequency of Responses: Reporting: Other (One-time).

Total Burden Hours: 165.

Animal and Plant Health Inspection Service

Title: Certificate for Poultry and Hatching Eggs for Export.

OMB Control Number: 0579–0048.

Summary of Collection: Certificate for Poultry and Hatching Eggs for Export is authorized by 21 U.S.C. 112 and 113. The regulation that implements this law is found in part 91 of Title 9, Code of Federal Regulations. The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission to facilitate the export of U.S. poultry and poultry products, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services, maintains information regarding the import health requirements of other countries for poultry and hatching eggs exported from the U.S. Most countries require a certification that our poultry and hatching eggs are disease free. APHIS will collect information on the quantity and type of poultry and hatching eggs designated for export, using form 17–6, Certificate for Poultry & Hatching Eggs for Export.

Need and Use of the Information: The information collected prevents unhealthy poultry or disease-carrying hatching eggs from being exported from the United States, thereby preventing the international dissemination of poultry diseases. The collection of

information also is necessary to satisfy the import requirements of the receiving countries, thereby protecting and encouraging trade with the United States.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,500.

Economic Research Service

Title: Family Child Care Homes Legislative Changes Study.

OMB Control Number: 0536–NEW.

Summary of Collection: The Family Child Care Homes (FCCHs) Legislative Changes Study is designed to study the effects of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, on the family child care component of USDA's Child and Adult Care Food Program (CACFP). The study was mandated by Congress to provide information on the impact of the legislative changes on the characteristics and operations of family child care home (FCCH) sponsors and providers, and to assess the effects of the legislation on targeting low-income families for participation. Information collected will come from information received from the study.

Need and Use of the Information: Information collected will be on the effect of the Personal Responsibility and Work Opportunity Reconciliation Act on the family child care component of CACFP. The study will examine the effects of the legislative changes on the sponsors, providers, and families served by the program.

Descripition of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions.

Number of Respondents: 3,676.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,521.

Farm Service Agency

Title: Authorization Agreement for Peanut Handlers Automatic Marketing Assessment Payments.

OMB Control Number: 0560–NEW.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 requires that the Secretary and the Farm Service Agency (FSA) provide for a non-refundable Peanut Marketing Assessment (PMA) for peanuts. The regulations found at 7 CFR Part 729.316(c)(1) provide that the peanut handler must remit the PMA required in the regulations to the Commodity Credit Corporation (CCC) in a manner specified by the Secretary. For 1991 through 1996 crop years, peanut handlers were required to remit their PMA checks to lockboxes. However, for the 1997 and subsequent crop years, the Tobacco and Peanuts Division, in conjunction with the lockbox bank, NationsBank, is providing peanut handlers with a PMA payment alternative, the DirectPay debit authorization service. Form CCC–1047, Authorization Agreement for Peanut Handler's Automatic Marketing Assessment Payments, will be used to collect information to enroll peanut handlers in the NationsBank DirectPay service for the 1998 and subsequent crop years.

Need and Use of the Information: Information collected will include the peanut handler's address, accounting contact, depository name, branch, address and checking account information to be forwarded to NationsBank to enroll the peanut handler in the DirectPay Service. The new payment alternative will allow peanut handlers to make automated PMA payments to CCC.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 30.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5.

Animal and Plant Health Inspection Service

Title: Animal Welfare, 9 CFR, Part 3, Marine Mammals.

OMB Control Number: 0579–0115.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) requires the U.S. Department of Agriculture (USDA) and the Animal and Plant Health Inspection Service (APHIS) to regulate the humane care and handling of most warmblooded animals including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. The purpose of the AWA is to insure that animals intended for use in research facilities or exhibition purposes or for use as pets are provided humane care and treatment and to ensure the humane treatment of animals during transportation in commerce; and to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. Records and reports will be used to collect information on the care and maintenance of marine mammals.

Need and Use of the Information: APHIS will collect information from records and reports on facilities construction, veterinary care, personnel, feeding, water quality, sanitation space requirements, transportation enclosures, and handling and care in transit. The records and reports provide APHIS with the data necessary for review and evaluation of program compliance by regulated facilities, and provide a workable enforcement system to carry out the requirements of the AWA, and the intent of Congress, on a practical daily basis without resorting to more detailed and stringent regulations and standards which could be more burdensome to regulated facilities.

Description of Respondents: Business or other for-profit; not for-profit institutions.

Number of Respondents: 812.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Semi-annually.

Total Burden Hours: 9,555.

Emergency approval for this information collection has been requested by June 26, 1998.

Farm Service Agency

Title: Operating Loans, Policies, Procedures and Authorizations—7 CFR Part 1941.

OMB Control Number: 0560–0162.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1941) (CONACT) authorizes the Secretary of Agriculture and the Farm Service Agency (FSA) to make (1) direct loans to eligible farmers and ranchers for farm operating loans, and (2) youth loans to enable them to operate enterprises in connection with 4–H Clubs, Future Farmers of America, and similar organizations. The basic objective of the farm operating loan program is to provide credit management assistance to farmers and ranchers to become operators of family sized farms, or continue such operations when credit is not available elsewhere. The assistance enables family farm operators to use their land, labor, and other resources and to improve their living and financial conditions so that they can eventually obtain credit elsewhere. Information must be collected in order for FSA officials to determine a loan applicant's eligibility to qualify for a loan and repayment ability.

Need and Use of the Information: FSA will collect the information through the use of the following forms: FmHA 441–10, Non-disturbance Agreement; FmHA 441–13, Division of Income and Non-disturbance Agreement; FmHA 1940–51, "Crop-share-Cash Farm Lease," FmHA 1940–53, "Cash Farm Lease," FmHA 1940–55," "Livestock Share Farm Lease," FmHA 1940–56, "Annual Supplement to Farm Lease; FmHA 441–8, "Assignment of Proceeds from the

Sale of Products"; FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products"; FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest". The FSA loan approval official must determine that adequate security and repayment ability exists before a loan is granted and that funds are used only for those purposes authorized by law.

Description of Respondents: Farm; individuals or households; business or other for-profit.

Number of Respondents: 52,210.

Frequency of Responses: Recordkeeping: On occasion.

Total Burden Hours: 11,012.

Farm Service Agency

Title: Agreement For The Use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent decree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation. FSA will collect information on the actual and planned disposition of chattel security through the use of form FmHA 1962–I.

Need and Use of the Information: Information collected will be from FSA borrowers who may be individual farmers or farming partnerships or corporations. The collection is on an individual-case basis by FSA staff directly from the borrower.

Description of Respondents: Farms; business or other for-profit; individuals or households.

Number of Respondents: 56,075.

Frequency of Responses: Recordkeeping: Annually.

Total Burden Hours: 18,505.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–16540 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Extension of the Period for Providing Comments Concerning the Proposed Revision of the NRCS Policy for Nutrient Management Technical and Program Assistance Activities

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Extension of the period for providing comments concerning the proposed revision of the NRCS policy for nutrient management technical and program assistance activities.

SUMMARY: NRCS advertised a notice of intention to adopt a revised policy for nutrient management related technical and program assistance activities in the **Federal Register** on April 22, 1998 (63FR19889). This notice is located on pages 19889–19892 (Vol 63, Number 77). Published with the notice was draft 10a of the proposed policy. Because of the significant public interest in this proposed policy revision, NRCS has extended the comment period for an additional thirty (30) days.

EFFECTIVE DATES: Comments must be received by July 22, 1998. This revised policy will be adopted after the close of the comment period. It will be issued as either part 503 of the NRCS National Agronomy Manual or in the NRCS General Manual.

FOR FURTHER INFORMATION CONTACT: Questions or comments about this policy should be directed to the Ecological Sciences Division, NRCS, Washington, DC. Submit questions or comments in writing to Charles H. Lander, Nutrient Management Specialist, NRCS, Post Office Box 2890, Room 6155–S, Washington, DC 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. NRCS will receive comments relative to the proposed changes through July 22, 1998. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on June 10, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, DC.

[FR Doc. 98–16418 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Associated Electric Cooperative, Inc., to construct a 100 megawatt simple cycle electric generating plant in Southeast Missouri.

Meeting Information

RUS will conduct a scoping meeting in an open house forum on Thursday, July 23, 1998, from 7 p.m. until 9 p.m. in the commission courtroom at the Stoddard County Courthouse in Bloomfield Missouri. The courthouse is located at 305 East Court Street.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utility Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468. Bob's E-mail address is bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: Associated Electric Cooperative, Inc., proposes to construct the plant at one of two potential sites. These sites are in the Missouri counties of Butler and Stoddard. The site in Butler County is located on State Highway 51, 1.7 miles north and 1.0 mile east of Fagus and the site in Stoddard County is located 1.2 miles east of Idalia on County Road E.

The proposed project is a nominal 100 megawatt simple cycle combustion turbine. It will be a single fuel gas-fired combustion turbine that will be

permitted as a deminimus air pollution source. This project will be used as a peaking unit and the deminimus permit status will be maintained by limiting the hours of operation. The number of operating hours will depend on the emission rates ultimately guaranteed by the vendor. The simple cycle gas-fired combustion turbine requires minimal water for operation. Depending on temperature and humidity conditions, there may be some water discharges from the site. Such discharges will be permitted under the Missouri National Pollutant Discharge Elemination System program.

Alternatives considered by RUS and Associated Electric Cooperative, Inc., to constructing the generation facility proposed include: (a) no action, (b) purchase of power, (c) load management, (d) construction of additional base load capacity, and (e) renewable energy.

To be presented at the public scoping meeting will be a siting and alternative study prepared by Associated Electric Cooperative, Inc. The siting and alternative study is available for public review at RUS at the address provided in this notice or at Associated Electric Cooperative, Inc., 2814 South Golden, Springfield, Missouri, 65801–0754, phone (417) 881–1204. This document will also be available at the Bloomfield Public Library which is located at 200 Seneca Street.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Associated Electric Cooperative, Inc., will be available at the scoping meeting to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the siting and alternative study, input that may be provided by government agencies, private organizations, and the public, Associated Electric Cooperative, Inc., and Burns and McDonnell will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the **Federal Register** and in newspapers with a circulation in the project area. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: June 17, 1998.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 98–16521 Filed 6–19–98; 8:45 am]

BILLING CODE 3410–15–P

AMERICAN BATTLE MONUMENTS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: American Battle Monuments Commission.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), American Battle Monuments Commission is issuing notice of our intent to amend the system of records entitled the Official Personnel Records and the General Financial Records to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by June 30, 1998.

The proposed routine use will become effective as proposed without further notice on June 30, 1998 unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to LTC Theodore Gloukhoff, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Fax: (703) 696–6666. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: LTC Theodore Gloukhoff, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Tel: (703) 696–6908, Fax: (703) 696–6666.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, American Battle Monuments Commission will disclose data from its Official Personnel Records and General Financial Records system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by American Battle Monuments Commission, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each American Battle Monuments Commission employee, within one month of the end of the quarterly reporting period.

Information submitted by American Battle Monuments Commission to the FPLS will be disclosed by the Office of

Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by American Battle Monuments Commission to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Official Personnel Records and the General Financial Records system notice is amended by addition of the following routine use:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 98–16470 Filed 6–19–98; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Plant Capacity

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elinor Champion, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, Telephone (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to resubmit the Survey of Plant Capacity. Data are gathered from a sample of manufacturing plants in the United States. The survey forms collect data on the value of plant production during actual operations and at full production capability.

This resubmission is to address proposed changes to the MQ–C1 form. We plan to expand one item to collect plant operations data by shift. We also plan to collect the number of temporary production workers and hours worked by temporary production workers in addition to the total number of production workers and hours worked.

In the 1997 survey, the reference period covers the fourth quarter of the survey year only rather than the fourth quarter of the survey year and the prior year. This change decreased the respondent burden from 2 hours to 1.25 hour per respondent. Based on discussions with potential respondents, we estimate that the new data will require about 1.5 hours to complete. Therefore we estimate the total respondent burden to complete the revised form to be 2.75 hours.

The survey data are used in measuring inflationary pressures and capital flows, in understanding productivity determinants, and in analyzing and forecasting economic and industrial trends. The survey results are used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense.

II. Method of Collection

The Census Bureau mails out survey forms to collect the data. Companies are asked to respond to the survey within 30 days of the initial mailing. Letters encouraging participation are mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.
Form Number: MQ–C1.
Type of Review: Regular.
Affected Public: Manufacturing Plants.
Estimated Number of Respondents: 17,000 plants.
Estimated Time Per Response: 2.75 hours.
Estimated Total Annual Burden Hours: 46,750.
Estimated Total Annual Cost: $606,815 (46,750 * $12.98).
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C., Sections 131, 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16533 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999 American Community Survey—Group Quarters Screening—Form ACS–2(GQ)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Paletta, Bureau of the Census, Room 3715–3, Washington, DC 20230, (301) 457–4269.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 1999 the American Community Survey (ACS) will be conducted in 53 counties. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining characteristic information from the GQs will ensure that we include the necessary people residing at GQs in the 1999 ACS.

A GQ screening operation is being conducted in conjunction with 1998 ACS activities. This request revises the existing GQ clearance for use in the 1999 ACS. Major changes are in the estimated number of respondents and in the estimated time per response. In 1998 we are screening a sample of the GQs in eight counties. In 1999 we will screen a sample of the GQs in 53 counties. After completing one-third of the 1998 screening, we have learned that screening averages about 20 minutes per response instead of 10 minutes as originally estimated. In 1999 we will use the same questionnaire for screening that we are using in 1998, Form ACS–2(GQ), ACS GQ Screening.

We will telephone a sample of GQs in the 53 counties where the 1999 ACS will be conducted. We will verify/update information such as GQ name, address, type, and phone number. We will screen to determine if the residents stay for less than 30 days and have another place to live. If so, the GQ will be classified as out-of-scope for ACS interviewing. If the GQ is in-scope, we will screen to determine if we can complete ACS interviews of the GQ residents by mail, thus saving the expense of personal visits. We will obtain a list of rooms and/or residents from which we can select a sample. All ACS interviewing will be conducted under OMB clearance number 0607–0810.

II. Method of Collection

Telephone interviews will be conducted from Census Bureau's National Processing Center in Jeffersonville, Indiana.

III. Data

OMB Number: 0607–0836.

Form Number: ACS–2(GQ).

Type of Review: Regular Submission.

Affected Public: Individuals, businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 900 GQs in the 1999 ACS.

Estimated Time Per Response: 20 minutes (.33 hours).

Estimated Total Annual Burden Hours: 300 hours.

Estimated Total Annual Cost: The group quarters screening is part of the 1999 American Community Survey, the cost of which is estimated to be 38.8 million dollars.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, USC, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16534 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–97]

Foreign-Trade Zone 50—Long Beach, CA Withdrawal of Application for Subzone Status for the L.A. Gear Footwear Distribution Facility

Notice is hereby given of the withdrawal of the application submitted by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 86, requesting special-purpose subzone status for the footwear distribution facility of L.A. Gear, Inc. The application was filed on April 7, 1997 (62 FR 18312, 4/15/97).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: June 12, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–16576 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 85–00014.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Grays Harbor Exporting Trading Company. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1996). Pursuant to this authority, a certificate of review was issued on December 20, 1985 to Grays Harbor Exporting Trading Company.

A certificate holder is required by law to submit to the Department of

Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On June 22, 1995, the Department of Commerce sent to Grays Harbor Exporting Trading Company a letter containing annual report questions with a reminder that its annual report was due on July 7, 1995. Additional reminders were sent on June 11, 1996 and on June 4, 1997. The Department has received no written response from Grays Harbor Exporting Trading Company to any of these letters.

On May 1, 1998, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Grays Harbor Exporting Trading Company that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Grays Harbor Exporting Trading Company thirty days to respond was published in the **Federal Register** on May 7, 1998 at 61 FR 60091. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Grays Harbor Exporting Trading Company to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Grays Harbor Exporting Trading Company for its failure to file an annual report. The Department has sent a letter, dated June 16, 1998, to notify Grays Harbor Exporting Trading Company of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: June 16, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–16421 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Standards Conformity—National Voluntary Conformity Assessment Systems Evaluation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Gladhill, National Institute of Standards and Technology (NIST), Building 820, Room 306, Gaithersburg, MD 20899. (301) 975–4273.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program includes activities related to laboratory testing, product certification, and quality system registration. The information provided is used to conduct an evaluation. After NVCASE evaluation, NIST provides recognition to qualified U.S. organizations that effectively demonstrate conformance with established criteria. The ultimate goal is to help U.S. manufacturers satisfy applicable product requirements mandated by other countries through conformity assessment procedures conducted in this country prior to export.

NVCASE recognition (1) provides other governments with a basis for having confidence that qualifying U.S. conformity assessment bodies (CABs) are competent, and (2) facilitates the acceptance of U.S. products in foreign regulated markets based on U.S. conformity assessment results. NVCASE would promote U.S. trade with Europe and allow the flow of U.S. products to those countries unhindered.

II. Method of Collection

Applicants submit written information to NIST.

III. Data

OMB Number: 0693–0019.

Form Number: None.

Type of Review: Regular submission for an extension of a currently approved collection.

Affected Public: Accreditation Bodies.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost: The estimate of the total annual cost to submit this information for fiscal year 1998 and future years is $1500. The cost is borne by the entities submitting the information.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, an clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 17, 1998.

Linda Engelmeier,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 98–16532 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Mauritius

June 16, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for shift, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67626, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on June 23, 1998, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	559,351 dozen.
347/348	1,053,280 dozen.
638/639	449,905 dozen.
647/648/847	551,304 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–16465 Filed 6–19–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Chuck Helfer, Office of Evaluation, (202) 606–5000, Extension 248, or through e-mail request (chelfer@cns.gov). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, NW., Washington, DC 20503. (202) 395–7316, by July 22, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

I. Foster Grandparent Program (FGP) Accomplishment Survey

Agency: Corporation for National and Community Service.

Title: Foster Grandparent Program (FGP) Accomplishment Survey.

OMB Number: None.

Agency Number: None.

Frequency: Annually.

Affected Public: Public and private non-profit institutions served by FGP volunteers.

Number of Respondents: 1,250.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 937.5 hours.

Total Annualized capital/startup costs: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.

Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. To date, accomplishment data has not been collected for the Foster Grandparent Program (FGP). "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

II. Retired and Senior Volunteer Program (RSVP) Accomplishment Survey

Agency: Corporation for National and Community Service.

Title: Retired and Senior Volunteer Program (RSVP) Accomplishment Survey.

OMB Number: None.

Agency Number: None.

Frequency: Annually.

Affected Public: Public and private non-profit institutions served by RSVP volunteers.

Number of Respondents: 1,250.
Estimated Time Per Respondent: 45 minutes.
Total Burden Hours: 937.5 hours.
Total Annualized capital/startup costs: 0.
Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.
Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. In the past, accomplishment data has been collected for the Retired and Senior Volunteer Program (RSVP) only once as part of a test study conducted in 1996 for the Corporation by Westat, Inc., an independent evaluation contractor. "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

III. Senior Companion Program (SCP) Accomplishment Survey

Agency: Corporation for National and Community Service.
Title: Senior Companion Program (SCP) Accomplishment Survey.
OMB Number: None.
Agency Number: None.
Frequency: Annually.
Affected Public: Public and private non-profit institutions served by FGP volunteers.
Number of Respondents: 1,250.
Estimated Time Per Respondent: 45 minutes.
Total Burden Hours: 937.5 hours.
Total Annualized capital/startup costs: 0.
Total Annual Cost (operating/maintaining systems or purchasing services): $14,062.50.
Description: The Corporation has been working on and conducting accomplishment surveys for all of its programs to assess the direct accomplishments of volunteers and members in their communities and at their workstations. To date, accomplishment data has not been collected for the SCP. Therefore, the Corporation seeks an accomplishment survey for the SCP. "Accomplishments" refer to the immediate, measurable outputs, or products of the services provided by the senior volunteers.

IV. Background

The Corporation published a Notice in the Federal Register (63 FR 1832, dated January 12, 1998), for the 60-day public comment period. In response to the 60-day public comment period on its proposed National Senior Service Corps Activities, Inputs and Accomplishments Surveys, 323 written comments were received broken down as follows: 37 on the SCP Survey, 77 on the FGP Survey, and 209 on the RSVP Survey. Approximately half of the project directors felt that the survey would be burdensome to a station supervisor. Thirty-eight percent of project directors suggested that Project Directors were better suited to fill out the survey because of station supervisors workload, lack of information, and potential damage to the project director/station supervisor relationship.

With respect to administration, almost all of the Foster Grandparent project directors stated that summer administration was not advised, as schools are closed over the summer. A tailored survey approach was suggested by a quarter of RSVP project directors because the survey was too long. One-fifth of the Senior Companions project directors and one-third of the Foster Grandparent project directors commented that their stations do not participate in professional activities. Lastly, approximately one-third of all project directors supplied specific wording, graphics or formatting suggestions. Based on the comments received, the Survey instruments, administration process and time line were revised. Changes can be summarized as follows:

- Administration of the Project Profile and Volunteer Activity (PPVA) data collection will be suspended for 1998 (and will resume in 1999) to reduce overall administrative burden as projects modify existing input-based data collection systems to include more outcome-oriented information on accomplishments.
- The Surveys will now be mailed to Project Directors instead of directly to Station Supervisors. Project Directors will work with stations selected for the samples in reporting the data.
- The deadline for submission of completed surveys will be delayed to September 30, 1998, to avoid potential reporting difficulties for stations such as schools which experience summer down-time.
- The RSVP Survey will be customized for each selected station to include only those BHN (Basic Human Needs) service codes specific to that station's operations.
- BHN service code definitions, which were designed to accommodate the broadest range of service activities in Senior Corps programs, were customized for the FGP and SCP Surveys to provide specific examples more applicable to these programs.
- Refinements were made in wording, format, and instructions.

Dated: June 16, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–16508 Filed 6–19–98; 8:45 am]
BILLING CODE 6058–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses announces public information collections and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 21, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041, ATTN: Mr. Bob Menig.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection please write to the above address, or call the Office of the Special Assistant for Gulf War Illnesses at (703) 578–8500.

Title and OMB Number: Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses—Generic Clearance; OMB Number 0704–[To be determined.]

Needs and Uses: The information collections addressed by this notice are

necessary to facilitate the investigations of the Office of the Special Assistant for Gulf War Illnesses into the experiences of Gulf War veterans during the war that may be related to the illnesses experienced by some Gulf War veterans. The information collected will be used to determine which Gulf War veterans may have further information about potential exposure incidents, to discover if there are any other observed incidents of exposure, to contribute to a better understanding of the events during and after the Gulf War, and to encourage veterans to enroll in a Department of Defense or Veterans Affairs medical program.

Affected Public: Individuals or Households.

Annual Burden Hours: 1,572.

Number of Respondents: 3,143.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Information on Each Collection Covered by This Notice

Chemical/Biological Incident Survey

Respondents are Gulf War veterans whose units were in the vicinity of a positive chemical/biological detection, alarm, or other reported incident. The purpose of this survey is to develop investigational leads to assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Possible Weapons Sites

Respondents are Gulf War veterans who served in units that reported possible storage sites for chemical or biological weapons agents. The purpose of this survey is to develop possible investigational leads that may assist investigators in their search for confirmation of the presence or use of chemical or biological agents during the Gulf War.

Depleted Uranium

Respondents are Gulf War veterans who served in units that may have placed them in contact with equipment potentially contaminated with depleted uranium (DU). Veterans will include personnel who were in or on U.S. combat vehicles at the time they were struck by DU munitions fired from U.S. tanks and personnel who were in contact with equipment either as a member of unit involved in retrograde operations, or as a member of a battle damage assessment team.

Pesticide Exposure Survey

Respondent are Gulf War veterans. Outreach letters will be mailed to Gulf War veterans based on their unit assignment during the Gulf War and their period of deployment. Calls will be made to respondents to ask information on experiences with pesticides during the Gulf War deployment.

Pesticides Use/Application

Gulf War veterans who served as physicians, environmental science officer, entomologists, preventive medicine specialists, field sanitation teams members, and veterans who served in logistics and supply positions will be contacted to determine which pesticides were used (including those purchased locally) and how they were employed in the Gulf during Operations Desert Shield and Desert Storm.

Water Contamination

Respondents will be preventive medicine specialists, field sanitation specialists, and transportation personnel involved with the maintenance of water transport vehicles who served in the Gulf War.

Food Contamination

Respondent will be preventive medicine specialists, field sanitation specialists, and food service personnel to determine what steps were taken to ensure the safety of the food provided to Gulf War troops.

Oil Well Fires

Respondents will be Gulf War veterans who reported contract with oil well fires in calls to the DoD Incident Reporting Line. Veterans will be contacted to get first hand accounts of their experience with oil well fire smoke, precautions they took, and the duration of their exposure under the oil well fire plume.

Retrograde Equipment

Respondents will be Gulf War veterans involved in vehicle cleaning operations prior to vehicles being shipped from the Gulf and personnel who accompanied vehicles during their retrograde shipment.

Armed Services Medical Department Personnel

Respondents will be medical personnel who served in the Gulf War. These personnel will be contacted to complete a survey of their experiences with medical surveillance, vaccine administration, and medical recordkeeping during the Gulf War deployment.

Combat Stress Control

Respondents will be military chaplains who served in the Gulf War. These chaplains will be surveyed to understand their experiences as participants in combat stress control.

Enemy Prisoners of War

Respondents will be Gulf War veterans who served in military police or medical units that were involved in the processing and treatment of enemy prisoners of war during the Gulf War deployment.

Petroleums, Oils, and Lubricants

Respondents will be Gulf War veterans who served in units during the Gulf War deployment that were involved in the acquisition, distribution, and use of petroleums, oils, and lubricants.

Personnel Deployed on Designated Deployments

Respondents will be former members of the Armed Services (including active and reserve component) who served during designated deployments. Personnel will be surveyed about their perceptions and experiences with Medical Force Protection, Medical Surveillance, and health support during the designated deployment.

Dated: June 16, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16435 Filed 6–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Beam Tech Corporation (hereafter Beam Tech), a Texas Corporation, an exclusive license under: United States Patent Application Serial No. 08/933,561 filed in the names of Jill E. Parker, John L. Alls, and Johnathan L. Kiel on September 19, 1997 for a "Diazodenitrification in Manufacture of Recombinant Bacterial Biosensors."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from

the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Senior Intellectual Property Counsel, Secretary of the Air Force, Office of the General Counsel, SAF/GCQ, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, Telephone (703) 696–9037.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–16471 Filed 6–19–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) Self-Study Instrument.

Frequency: Every 3 or 4 years per State, based on the monitoring schedule.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 3,360.

Abstract: Under the Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act), States are required to maintain and implement a Statewide, comprehensive, coordinated, multi disciplinary, interagency system that provides early intervention services to infants and toddlers with disabilities and their families. The State's lead agency for Part C is responsible for the monitoring of programs and activities within the State, and the Federal government must provide technical assistance to States to carry out their Part C responsibilities. The self study instrument provides technical guidance to the State, and is also used for Federal and State monitoring of the Part C program.

[FR Doc. 98–16473 Filed 6–19–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 21, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the

information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 16, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of Effective Adult Basic Education Programs and Practices.
Frequency: Three (3) times per year (May, September, and December).
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 78.
Burden Hours: 618.
Abstract: The U.S. Department of Education has been working with State Directors of adult education and local providers to document the learning gains of adult education participants. Because little is known about the effectiveness of adult basic education (ABE) programs for first-level learners, this is an exploratory study. Hence, we are developing measures to describe the operational and instructional characteristics of ABE programs and are testing methods of measuring outcomes. The programs participating in the study were selected based on information collected in previous case studies that had evidence of good instruction, where teachers had been trained in a specific model for delivering adult education instruction, and where there was evidence of effective program operations. Respondents are program participants who voluntarily enroll in federally funded adult basic education classes.

[FR Doc. 98–16474 Filed 6–19–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 16, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: 1999 National Household Education Survey (NHES: 99).
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 107,155.
Burden Hours: 15,826.
Abstract: The NHES: 99 will be a telephone survey of households remeasuring key indicators from past NHES surveys related to such topics as Early Childhood Care and Program Participation, Parent/Family Involvement in Education; Youth Civic Involvement, and Adult Education. Respondents will be parents of children from birth through 12th grade, youth enrolled in grades 6 through 12, and adults age 16 and older and not enrolled in grade 12 or below. The collection will provide information on the National Household Education Goals which pertain to school readiness (Goal 1), student achievement and citizenship (Goal 3), adult literacy and lifelong learning (Goal 6), and parental participation (Goal 8), and the U.S. Department of Education's Strategic Plan of 1998–2000.

[FR Doc. 98–16475 Filed 6–19–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–595–000]

ANR Pipeline Company; Notice of Application

June 16, 1998.

Take notice that on June 5, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to utilize

additional work space and for any other authorization deemed necessary associated with a pipeline replacement project in Bolivar County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that it is required to replace two 0.30 mile segments of its Southeast mainline system because of increased population density and in order to satisfy U.S. Department of Transportation safety regulations. ANR states that in order to accomplish this replacement construction, it will have to utilize work areas which may not have been included in the scope of the authorizations for the facilities when they were originally certificated and constructed. Therefore, ANR requests the temporary use of work space in order to make the replacement. ANR states that the construction will be done under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 7, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16477 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–249–000 and RP98–250–000]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

June 16, 1998.

Take notice that on June 11, 1998, Columbia Gas Transmission Corporation, (Columbia Transmission) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively referred to as Columbia), tendered for filing as part of their FERC Gas Tariffs, Second Revised Volume No. 1, the following pro forma tariff sheets:

Columbia Gas Transmission Corporation

Pro Forma Fifth Revised Sheet No. 171
Pro Forma Third Revised Sheet No. 185
Pro Forma Fourth Revised Sheet No. 197
Pro Forma Third Revised Sheet No. 208
Pro Forma Fourth Revised Sheet No. 217
Pro Forma Second Revised Sheet No. 223
Pro Forma Fourth Revised Sheet No. 261
Pro Forma Second Revised Sheet No. 463
Pro Forma Original Sheet No. 463A
Pro Forma Original Sheet No. 463B

Columbia Gulf Transmission Company

Pro Forma Fourth Revised Sheet No. 125
Pro Forma First Revised Sheet No. 287
Pro Forma Original Sheet No. 288
Pro Forma Original Sheet No. 289
Pro Forma Original Sheet No. 290

In these filings, Columbia Transmission and Columbia Gulf are presenting a specific proposal to permit the negotiation of the terms and conditions of tariffed services to provide a specific framework within which the Commission may address the issue of negotiated terms and conditions. In this regard, Columbia states that the proposal is set forth in the format of pro forma tariff sheets to provide the Commission with the opportunity to examine Columbia's proposal without the necessity of accepting or rejecting the sheets within a short time period. Columbia is not filing here any specific negotiated arrangement. Given the nature of the proposal and as explained in greater detail in its "Statement of Nature, Reasons and Basis," Columbia requests that the Commission set this filing for resolution by means of a technical conference, and permit Columbia, its customers, and interested parties an opportunity to discuss the issues presented. Columbia further requests that the technical conference be scheduled no earlier than 120 days from the date of this filing to permit Columbia and its customers to meet informally to discuss the issues raised by the filing.

Columbia further states that the specific proposal contained in the pro forma tariff sheets defines recourse or standard service as that which is provided under the current tariffs. It also lists certain non-negotiable tariff provisions as well as the procedures for the disclosure and implementation of an actual negotiated service arrangement. The procedures are consistent with procedures submitted on May 4, 1998 by the American Gas Association. As explained in greater detail in the filings, these elements of the proposal address stated concerns about the continuing viability of recourse services, market power and undue discrimination in the negotiated terms and conditions context.

Columbia Transmission and Columbia Gulf state that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; 2603 Augusta, Suite 124, Houston, Texas; and 700 Thirteenth Street, NW, Suite 900, Washington, DC; and have been mailed to all firm customers, interruptible customers, and affected state commissions.

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, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16488 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–17–003]

Dauphin Island Gathering Partners; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 11, 1998, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 12, 1998:

Third Revised Sheet No. 9

DIGP states that the purpose of this filing is to report the name and rate of persons that DIGP expects to begin receiving service at negotiated rates on June 12, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16536 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–346–000, TM97–3–24–000, and RP98–123–000]

Equitrans, L.P., Notice of Informal Settlement Conference

June 16, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 25, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of reviewing the draft settlement documents in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102 (b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16482 Filed 06–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–001]

Granite State Gas Transmission, Inc., Notice of Compliance Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 336, for effectiveness on May 1, 1998.

According to Granite State, Substitute Original Sheet No. 336 is submitted in compliance with the Commission's order issued May 28, 1998 in Docket No. RP98–205–000. Granite State further states that, in the foregoing order, the Commission accepted tariff sheets filed by Granite State proposing a surcharge on its rates for firm and interruptible transportation services to recover costs related to an extension of a lease of a pipeline facility from Portland Pipe Line for one year, from May 1, 1998 to April 30, 1999.

According to Granite State, when it initially filed the surcharge tariff provision, it proposed an effective date of June 1, 1998; later, Granite State says that, by letter on May 7th, it requested that the surcharge be made effective on May 1 for a period of one year, corresponding with the term of the extension of the lease.

Granite State further states that the Commission accepted the surcharge tariff provision for effectiveness on May 1, 1998, and Substitute Original Sheet No. 336 has been revised to reflect the effectiveness of the surcharge as of May 1, 1998, for one year ending April 30, 1999, instead of May 31, 1999, as originally filed.

Granite State also states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16486 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–010]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, KN Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–D, the following tariff sheets to be effective November 1, 1997:

Substitute First Revised Sheet No. 18B
Original Sheet No. 61A

KNI states that these tariff sheets are being filed in accordance with the Office of Pipeline Regulation's (OPR) letter order dated May 29, 1998, in (KNI) Order No. 587 proceeding in Docket Nos. RP97–142–008 and RP97–142–009.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16483 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–602–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 9, 1998, NorAm Gas Transmission Company (NGT), 525 Milam, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–602–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate a tap, regulator, and metering facilities, located in Poinsett County, Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) 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.

NGT proposes to operate a 1-inch tap and 1-inch regulator on Line JM–25, located in Section 29, Township 11 North, Range 7 East, located in Poinsett County, Arkansas. NGT states that these facilities were constructed under Section 311 of the Natural Gas Policy Act and Subpart B, Part 284 of the Commission's Regulations and are necessary to provide increased service to the rural distribution system of Arkla, a distribution division of NorAm Energy Corporation (Arkla).

NGT states that the total estimated increased volumes to be delivered through this new tap are approximately 1,000 MMBtu annually and 10 MMBtu on a peak day. NGT declares that the total costs are estimated at $2,032 and Arkla will reimburse NGT an estimated $1,600 of those costs.

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 385.214) 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 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. 98–16485 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–599–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 8, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103–0330, filed in Docket No. CP98–599–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon five small volume measuring stations (farm taps) located in Nebraska, under Northern's blanket certificate issued in Docket No CP82–401–000 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 all five end-users have requested the removal of the measuring stations from their property. The Nebraska counties involved with the abandonment are Butler, Gage and Lancaster.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes 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 385.214) 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 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. 98–16478 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–601–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 9, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–601–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to construct and operate approximately 2.8 miles of 6-inch loop line on its Moscow Lateral in Whitman County, Washington and to upgrade its Moscow Meter Station in Latah County, Idaho to better accommodate existing firm service delivery obligations to The Washington Water Power Company, under Northwest's blanket certificate issued in Docket No. CP82–443–000 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.

Northwest proposes to partially loop the existing 4-inch Moscow Lateral in Whitman County, Washington with 2.8 miles of 6-inch pipeline, which Northwest states will increase the maximum design capacity of the Moscow Lateral from approximately 8,200 Dth per day to approximately 9,800 Dth per day.

Northwest also proposes to upgrade the Moscow Meter Station by removing the two existing 2-inch regulators, the two existing 4-inch orifice meters and the existing 4-inch outlet piping and appurtenances, and installing as replacement facilities two new 4-inch regulators, two 4-inch control valves, two new 6-inch orifice meters, a new relief valve and new 6-inch outlet piping and appurtenances. Northwest

states that as a result of this upgrade, the maximum design capacity of the meter station will increase from approximately 3,200 Dth per day to approximately 12,000 Dth per day at 150 psig.

Northwest states that the estimated cost of constructing the proposed loop line is approximately $1,447,517 and the estimated cost of upgrading the Moscow Meter Station is approximately $197,100.

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 385.214) 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 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. 98–16479 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–597–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 16, 1998.

Take notice that on June 5, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–597–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for approval to partially abandon facilities at the Soda Springs Meter Station in Caribou County, Idaho, and to construct and operate upgraded replacement facilities at this station to accommodate a request for additional delivery capabilities under authorized transportation agreements with Intermountain Gas Company's affiliate, IGI Resources, Inc., under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to upgrade the Soda Springs Meter Station by removing the four 2-inch regulators, one 4″ x 8″ relief valve and appurtenances and installing two new 3-inch regulators (with 50 percent trim), a 6″ x 8″ relief value and appurtenances. Northwest states that as a result of this upgrade, the maximum design capacity of the meter station will increase from 12,087 Dth per day at 350 psig to approximately 17,432 Dth per day at 400 psig. The total cost of the proposed facility replacement is estimated to be approximately $58,100, which will be reimbursed by Intermountain.

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 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulation 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 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. 98–16480 Filed 6–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–248–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 16, 1998.

Take notice that on June 10, 1998, Northwest Pipeline Corporation (Northwest), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective July 11, 1998:

First Revised Sheet No. 16
Seventh Revised Sheet No. 24
Fourth Revised Sheet No. 104
Fourth Revised Sheet No. 108
Seventh Revised Sheet No. 200
Sixth Revised Sheet No. 242
Fourth Revised Sheet No. 274
Original Sheet No. 274–A
Fourth Revised Sheet No. 275
Second Revised Sheet No. 276
Third Revised Sheet No. 277
Second Revised Sheet No. 278
Original Sheet No. 278–A

Northwest states that the purpose of this filing is to propose changes to the way in which it awards available capacity. Section 25 of the General Terms and Conditions of Northwest's tariff, "Right of First Refusal; Posting of Available Capacity," currently pertains only to capacity that becomes available under expiring or terminating agreements. Proposed Section 25, which is now entitled "Available capacity," has been revised and expanded to establish a new procedure for posting, bidding and awarding unsubscribed capacity instead of awarding such capacity on a first-come, first-served basis. Section 25 also has been expanded to establish the procedures Northwest will use to reserve capacity for future expansion projects. Corresponding changes also have been made to related tariff sheets.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

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. 98–16487 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2579–000]

Pittsfield Hydropower Company Inc.; Notice of Withdrawal

Jnue 16, 1998.

Take notice that on June 11, 1998, Pittsfield Hydropower Company Inc., tendered for filing a Notice of Withdrawal of its filing made on April 20, 1998, in docket No. ER98–2579–000.

Copies of the notice of withdrawal is being served upon Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 216 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.216). All such motions and protests should be filed on or before June 26, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16535 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–38–001]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 16, 1998.

Take notice that on June 12, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 1998:

Substitute Third Revised Sheet No. 5
Substitute Third Revised Sheet No. 6
Substitute First Revised Sheet No. 6A
Substitute First Revised Sheet No. 7
Substitute Second Revised Sheet No. 8
Substitute Third Revised Sheet No. 9
Second Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed to show the legend, names of areas, fields, receipt and delivery points and other points of reference reflected on Williston Basin's system maps in a legible format, in accordance with the Commission's May 28, 1998, Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16484 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3108–000, et al.]

Rocky Mountain Natural Gas & Electric, L.O.C., et al.; Electric Rate and Corporate Regulation Filings

June 15, 1998.

Take notice that the following filings have been made with the Commission:

1. Rocky Mountain Natural Gas & Electric, L.L.C.

[Docket No. ER98–3108–000]

Take notice that on June 10, 1998, Rocky Mountain Natural Gas & Electric L.L.C., amended the notice of filing dated January 22, 1998, for Waivers, Blanket Approvals, and Order Approving Rate Schedule for an Electric License. Rocky Mountain Natural Gas & Electric L.L.C., seeks approval of an initial rate schedule, to be effective 60 days after the date of filing, or the date the Commission issues an order in this proceeding.

In its filing, Rocky Mountain Natural Gas & Electric L.L.C., states that the rates included in the above-mentioned Service Agreement are Rocky Mountain Natural Gas & Electric L.L.C.'s rates and requests in the compliance filing to FERC Order No. 888–A.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER98–3279–000]

Take notice that on June 10, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Avista Energy, Inc.; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with PP&L, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER98–3281–000]

Take notice that on June 10, 1998, the New England Power Pool (NEPOOL or Pool), Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of June 1, 1998, of Federal Energy Sales, Inc., (Federal Energy). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by Federal Energy. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL EPC No. 2.

The Executive Committee states that termination of Federal Energy with a retroactive date of June 1, 1998, would relieve this entity, at its request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove Federal Energy from membership in the Pool. Federal Energy has not received any energy related services (such as scheduling, transmission, capacity or energy services) under the NEPOOL Agreement.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER98–3282–000]

Take notice that on June 10, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted materials relating to the financial

security and payment provisions of the restated and amended New England Power Pool Agreement. The Executive Committee requests that the late payment provisions be permitted to become effective July 1, 1998.

The NEPOOL Executive Committee states that copies of these materials were sent to the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER98–3283–000]

Take notice that on June 10, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Entergy Power Marketing Corp., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon Entergy Power Marketing Corp., and the Public Utilities Commission of Ohio.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–3284–000]

Take notice on June 10, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Commonwealth Edison Company, Energy 2000 Power Services, Northeast Energy Services, Inc., PacificCorp Power Marketing, Inc., and Avista Energy, Inc., for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed Service Agreements with Commonwealth Edison Company, Entergy Services, Inc., Northeast Energy Services, Inc., PacifiCorp Power Marketing, Inc., Oglethorpe Power Corporation, Southern Company Services, Inc., Tennessee Valley Authority, Aquila Power Corporation, Avista Energy, Inc., Enron Power Marketing, Inc., Koch Energy Trading, Inc., LG&E Energy Marketing, Inc., Tractebel Energy Marketing, Inc., and Williams Energy Services Company for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on May 14, 1998.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company, as Agent for Union Electric Company and Central Illinois Public Service Company

[Docket No. ER98–3285–000]

Take notice that on June 10, 1998, Ameren Services Company (Ameren Services), as agent for Union Electric Company and Central Illinois Public Service Company (collectively identified as the Ameren Companies) tendered for filing a proposed Market Based Rate Power Sales Tariff (the Tariff) under which it proposes to engage in the sales of electricity at market-based rates on behalf of the Ameren Companies. Ameren Services has asked that the Tariff be permitted to become effective on June 11, 1998. Ameren Services proposes that the Tariff supersede a Market-Based Rate Power Sales Tariff previously filed by Union Electric Company in Docket No. ER96–3664–000.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER98–3286–000]

Take notice that on June 10, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Plum Street Enterprises Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553–000 (80 FERC ¶61,284 (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 4, 1998, for Plum Street Enterprises Inc., Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Upper Peninsula Power Company

[Docket No. ER98–3287–000]

Take notice that on June 10, 1998, Upper Peninsula Power Company (UPPCo), tendered for filing an Electric Service Agreement dated as of August 7, 1996 between UPPCo, and Wisconsin Public Service Corporation (WPSC) (the Agreement), and a Service Agreement for Non-Firm Point-to-Point Transmission Service under UPPCo's open access transmission tariff that may be utilized for delivery of capacity and/or energy sold under the Agreement to WPSC. UPPCO has proposed to make the Agreement and the transmission service agreement effective on July 15, 1997.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER98–3288–000]

Take notice that on June 10, 1998, Louisville Gas and Electric Company tendered for filing copies of an unexecuted Purchase and Sales Agreement between Louisville Gas and Electric Company and Amoco Energy Trading Corporation under Rate GSS.

Comment date: May 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER98–3289–000]

Take notice that on June 10, 1998, Louisville Gas and Electric Company tendered for filing copies of an unexecuted Sales Agreement between Louisville Gas and Electric Company and Ameren Service Company under Rate GSS.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Alliant Services, Inc.

[Docket No. ER98–3290–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant), on behalf of Interstate Power Company (IPC) and IES Utilities, Inc. (IES), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and IES for the period May 15, 1998 through October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Alliant Services, Inc.

[Docket No. ER98–3291–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and IES Utilities, Inc. (IES), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and IES for the period May 15, 1998 through

October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Alliant Services, Inc.

[Docket No. ER98–3292–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant) on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light Company (WPL), tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and WPL for the period August 1, 1998 through October 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Services, Inc.

[Docket No. ER98–3293–000]

Take notice that on June 10, 1998, Alliant Services, Inc. (Alliant), on behalf of Interstate Power Company (IPC) and Wisconsin Power & Light Company (WPL), tendered for filing a Negotiated Capacity Transaction Agreement (Agreement) between IPC and WPL for the period May 1, 1998 through July 31, 1998. The Agreement was negotiated to provide service under the IEC System Coordination and Operating Agreement among IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company and Alliant.

Alliant has served copies of this filing to the Iowa Utilities Board, Minnesota Public Utilities Commission, the Public Services Commission of Wisconsin and the Illinois Commerce Commission.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16476 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 17, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 24, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO

701ST MEETING—JUNE 24, 1998

REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2310, 094, PACIFIC GAS & ELECTRIC COMPANY
CAH–2.
OMITTED
CAH–3.
DOCKET# P–2530, 019. CENTRAL MAINE POWER COMPANY
OTHER#S P–2531, 023, CENTRAL MAINE POWER COMPANY
CAH–4.
OMITTED
CAH–5.
DOCKET# P–10856, 003, UPPER PENINSULA POWER COMPANY
CAH–6.
OMITTED

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–917, 000, SOUTHWEST RESERVE SHARING GROUP
CAE–2.
DOCKET# ER98–2783, 000, BRIDGEPORT ENERGY L.L.C.
CAE–3.
OMITTED
CAE–4.
DOCKET# ER98–2878, 000, ORMOND BEACH POWER GENERATION, L.L.C.
CAE–5.
DOCKET# EL98–39, 000, WESTERN KENTUCKY ENERGY CORPORATION, WESTERN KENTUCKY LEASING CORPORATION AND WKE STATION TWO INC.
OTHER#S ER98–2568, 000, WKE STATION TWO INC.
ER98–2569, 000, WESTERN KENTUCKY ENERGY CORPORATION
ER98–2684, 000, LG&E ENERGY MARKETING, INC., WESTERN KENTUCKY ENERGY CORPORATION AND WKE STATION TWO INC.
CAE–6.
DOCKET# ER98–2752, 000, WISCONSIN POWER & LIGHT COMPANY
CAE–7.
DOCKET# ER98–2731, 000, PORTLAND GENERAL ELECTRIC COMPANY
OTHER#S ER98–2791, 000, ARIZONA PUBLIC SERVICE COMPANY
CAE–8.
DOCKET# ER98–2773, 000, CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S ER98–2774, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2775, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2778, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2779, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2792, 000, CALIFORNIA POWER EXCHANGE CORPORATION
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ER98–2801, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2802, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2803, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2804, 000, CALIFORNIA POWER EXCHANGE CORPORATION

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ER98–2806, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2810, 000, CALIFORNIA POWER EXCHANGE CORPORATION
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ER98–2837, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2838, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2839, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2840, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2841, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–2842, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–9.
DOCKET# ER98–2680, 000, DUKE ENERGY MOSS LANDING LLC
OTHER#S ER98–2681, 000, DUKE ENERGY MORRO BAY LLC
ER98–2682, 000, DUKE ENERGY OAKLAND LLC

CAE–10.
DOCKET#, OA97–25, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OTHER#S EL98–40, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–1890, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–2060, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–606, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)

CAE–11.
DOCKET# OA97–572, 000, EASTON UTILITIES COMMISSION
OTHER#S OA97–577, 000, DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION, INC.
OA97–582, 000, CITIES OF ANAHEIM, AZUSA, BANNING, COLTON AND RIVERSIDE, CALIFORNIA
OA97–603, 000, VALLEY ELECTRIC ASSOCIATION, INC.
OA97–711, 000, SALUDA RIVER ELECTRIC COOPERATIVE, INC.
OA97–717, 000, IDAHO COUNTY LIGHT & POWER COOPERATIVE ASSOCIATION, INC.
OA97–723, 000, LYON RURAL ELECTRIC COOPERATIVE
OA98–1, 000, FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.
OA98–7, 000, NORTHERN CALIFORNIA POWER AGENCY
OA98–8, 000, NORTH WEST RURAL ELECTRIC COOPERATIVE
OA98–9, 000, MINNKOTA POWER COOPERATIVE, INC.
OA98–10, 000, NORTHERN LIGHTS, INC.
OA98–11, 000, KANDIYOHI COOPERATIVE ELECTRIC POWER ASSOCIATION
OA98–13, 000, CITY UTILITIES OF SPRINGFIELD, MISSOURI

CAE–12.
DOCKET# ER97–1523, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OTHER#S OA97–470, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, ONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.

CAE–13.
DOCKET# ER92–323, 000, APPALACHIAN POWER COMPANY
OTHER#S ER92–324, 000, APPALACHIAN POWER COMPANY

CAE–14.
DOCKET# EC98–35, 000, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.

CAE–15.
DOCKET# ER93–471, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY

CAE–16.
DOCKET# ER98–2624, 000, DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD., L.L.P.

CAE–17.
DOCKET# OA96–114, 000, GPU SERVICE CORPORATION

CAE–18. OMITTED

CAE–19.
DOCKET# ER98–2668, 000, DUKE ENERGY MOSS LANDING LLC
OTHER#S ER98–2669, 000, DUKE ENERGY OAKLAND, LLC
ER98–2785, 000, PACIFIC GAS & ELECTRIC COMPANY

CAE–20.
DOCKET# ER97–4691, 000, MONTAUP ELECTRIC COMPANY
OTHER#S ER98–861, 000, MONTAUP ELECTRIC COMPANY

CAE–21.
DOCKET# ER96–371, 000, CLEVELAND ELECTRIC ILLUMINATING COMPANY
OTHER#S ER95–1295, 000, MARKET RESPONSIVE ENERGY, INC.

CAE–22.
DOCKET# ER98–1106, 000, NEW ENGLAND POWER COMPANY, BANGOR HYDRO-ELECTRIC COMPANY, BOSTON EDISON COMPANY AND CENTRAL MAINE POWER COMPANY, ET AL.

CAE–23.
OMITTED

CAE–24.
DOCKET# ER97–852, 001, ONTARIO HYDRO INTERCONNECTED MARKETS INC.

CAE–25.
DOCKET# EL98–32, 000, UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS V. PACIFICORP

CAE–26.
DOCKET# EL98–18, 000, ENTERGY SERVICES, INC.

CAE–27.
DOCKET# OA97–408, 003, AMERICAN ELECTRIC POWER SERVICE CORPORATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OTHER#S OA97–117, 003 ALLEGHENY POWER SERVICE CORPORATION, ONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OA97–125, 003, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
OA97–126, 003, ILLINOIS POWER COMPANY
OA97–158, 003, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 003, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 003, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA97–279, 003, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–284, 003, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT

LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 003, MIDAMERICAN ENERGY COMPANY
OA97–411, 003, PACIFICORP
OA97–430, 003, EL PASO ELECTRIC COMPANY
OA97–431, 003, BOSTON EDISON COMPANY
OA97–434, 003, CONSUMERS ENERGY COMPANY
OA97–439, 001, VIRGINIA ELECTRIC AND POWER COMPANY
OA97–442, 002, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–445, 003, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 003, PUGET SOUND ENERGY, INC.
OA97–459, 003, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
OA97–630, 002, NORTHEAST UTILITIES SERVICE COMPANY, ONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP97–344, 009, TEXAS GAS TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP98–155,001, GRANITE STATE GAS TRANSMISSION, INC
OTHER#S RP98–155, 002, GRANITE STATE GAS TRANSMISSION, INC
TM98–3–4, 001, GRANITE STATE GAS TRANSMISSION, INC
TM98–4–4, 000, GRANITE STATE GAS TRANSMISSION, INC
CAG–3.
DOCKET# RP98–232, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–4.
DOCKET# RP98–234, 000, CNG TRANSMISSION CORPORATION
OTHER#S RP97–406, 012, CNG TRANSMISSION CORPORATION
RP98–91, 004, CNG TRANSMISSION CORPORATION
RP98–91, 005, CNG TRANSMISSION CORPORATION
RP98–91, 006, CNG TRANSMISSION CORPORATION
RP98–103, 003, CNG TRANSMISSION CORPORATION
RP98–234, 001, CNG TRANSMISSION CORPORATION
RP98–234, 002, CNG TRANSMISSION CORPORATION
CAG–5.
DOCKET# RP98–236, 000, DISCOVERY GAS TRANSMISSION L.L.C.
CAG–6.
DOCKET# RP98–237, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP98–239, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–8.
DOCKET# GT98–45, 000, EL PASO NATURAL GAS COMPANY
CAG–9. OMITTED
CAG–10.
DOCKET# RP98–229, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–11.
DOCKET# RP98–233, 000, NORTHERN NATURAL GAS COMPANY
CAG–12.
OMITTED
CAG–13.
OMITTED
CAG–14.
OMITTED
CAG–15.
DOCKET# CP88–391, 021, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP88–391, 022, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 006, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP93–162, 007, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP97–177, 008, STEUBEN GAS STORAGE COMPANY
CAG–17.
OMITTED
CAG–18.
DOCKET# RP91–26, 018, EL PASO NATURAL GAS COMPANY
CAG–19.
OMITTED
CAG–20.
DOCKET# RP98–145, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–21.
OMITTED
CAG–22.
DOCKET# RP98–198, 000, TEXAS EASTERN TRANSMISSION CORPORATION
OTHER#S RP85–177, 126, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–23.
DOCKET# OR98–12, 000, LONGHORN PARTNERS PIPELINE, L.P.
CAG–24.
DOCKET# IS98–141, 000, PLANTATION PIPE LINE COMPANY
CAG–25.
DOCKET# RP98–52, 003, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S GP98–3, 000, OXY USA, INC.
GP98–4, 000, AMOCO PRODUCTION COMPANY
GP98–13, 000, MOBILE OIL CORPORATION
GP98–16, 000, UNION PACIFIC RESOURCES CORPORATION
GP98–18, 000, ANADARKO PETROLEUM CORPORATION
CAG–26.
DOCKET# RP97–149, 005, GAS RESEARCH INSTITUTE
OTHER#S RM97–3, 002, RESEARCH, DEVELOPMENT AND DEMONSTRATION FUNDING
RP97–391, 003, GAS RESEARCH INSTITUTE
CAG–27.
DOCKET# RP91–229, 026, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP92–166, 019, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–28.
DOCKET# RP97–320, 001, JOINT PARTIES V. NORTHWEST PIPELINE CORPORATION
CAG–29.
OMITTED
CAG–30.
DOCKET# RS92–49, 011, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP92–74, 018, SOUTH GEORGIA NATURAL GAS COMPANY
RP92–204, 005, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–31.
DOCKET# RP91–143, 045, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–32.
DOCKET# RS92–5, 020, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S RS92–6, 018, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–33.
DOCKET# RS92–24, 019, TEXAS GAS TRANSMISSION CORPORATION
CAG–34.
DOCKET# RS92–45, 021, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP94–87, 011, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–122, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–169, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–195, 009, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–35.
DOCKET# MG98–10, 000, VENICE GATHERING SYSTEM, L.L.C.
CAG–36.
DOCKET# CP98–192, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–37.
DOCKET# CP98–249, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–38.
DOCKET# CP98–132, 000, NORTHERN NATURAL GAS COMPANY
CAG–39.
DOCKET# CP98–128, 000, WYOMING INTERSTATE COMPANY, LTD. AND COLORADO INTERSTATE GAS COMPANY
CAG–40.
OMITTED
CAG–41.
DOCKET# CP98–178, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–42.
DOCKET# CP98–238, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–43.
DOCKET# CP96–213, 007, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S CP90–644, 006, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–44.
DOCKET# TM98–2–8, 000, SOUTH GEORGIA NATURAL GAS COMPANY

HYDRO AGENDA

H–1. RESERVED

ELECTRIC AGENDA

E–1. RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
OMITTED

David P. Boergers,

Acting Secretary.

[FR Doc. 98–16618 Filed 6–19–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00242; FRL–5796–5]

Pilot Project Approach for the Acquisition of Environmentally Preferable Products and Services; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is making available for public review its Pilot Project Approach on the use of non-governmental entities in connection with Executive Order 12873's mandate to EPA to issue guidance concerning the acquisition of environmentally preferable products and services by the Federal Government. Interested parties may request a copy of the Agency's Pilot Project Approach as set forth in the ADDRESSES unit of this notice.

ADDRESSES: To obtain a copy of the Pilot Project Approach contact: Pollution Prevention Information Clearinghouse (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–1023, facsimile number: 202–260–0178, e-mail: PPIC@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Julie Shannon, Pollution Prevention Division (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–2736, e-mail: shannon.julie@epamail.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the Pilot Project Approach are available from the EPA Home Page at the Federal Register--Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

B. Fax-On-Demand

Using a faxphone call 202–401–0527 and select item 8001 for a copy of the Pilot Project Approach.

II. Background

Section 503 of Executive Order 12873 on Federal Acquisition, Recycling and Waste Prevention, issued on October 20, 1993, includes a mandate for EPA to issue guidance to help Executive agencies identify and purchase environmentally preferable products. Pursuant to this mandate, on September 28, 1995, EPA issued a proposed Guidance on the Acquisition of Environmentally Preferable Products and Services (60 FR 50722, September 29, 1995) (FRL–4760–5). In EPA's proposed Guidance (see Unit III.E. of the September 29th document), EPA acknowledged the existence of non-governmental entities, including, but not limited to, environmental standard-setting organizations, third-party certification programs, and environmental labeling or environmental "report card" programs and other environmental consulting organizations to which Executive agencies, in appropriate circumstances, may refer for technical assistance in meeting the Executive Order's goals.

III. The Pilot Project Approach

This Notice of Availability publicizes EPA's Pilot Project Approach for Executive agencies to generate information regarding potential uses of non-governmental entities in the acquisition of environmentally preferable products and services.

This Pilot Project Approach will be used to further refine the concepts and principles established in EPA's proposed Guidance on the Acquisition of Environmentally Preferable Products and Services. Simultaneously with the issuance of this Notice of Availability, EPA and other agencies will begin moving forward with the Pilot Project Approach. Ultimately, this Pilot Project Approach will provide practical information to EPA in the development of EPA's final Guidance.

IV. Public Record

Materials related to the use of non-governmental entities are available in the public record under docket control number "OPPTS–00149." The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays.

List of Subjects

Environmental protection.

Dated: June 10, 1998.

Mary Ellen Weber,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–16570 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6113–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees; access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted on or before June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Street, National Program Director, Senior Environmental Employment Program (3641), U.S. Environmental Protection Agency, 401 N Street, S.W., Washington, DC 20460. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313) , which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to: Federal. State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives. of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
CQ–820932–02	National Older Worker Career Center, Inc.
CQ–822791–02	NOWCC.
CQ–822911–02	NOWCC.
CQ–822912–02	NOWCC.
CQ–822985–02	NOWCC.
CQ–823144–02	NOWCC.
CQ–823655–02	NOWCC.
CQ–823893–02	NOWCC.
CQ–823905–02	NOWCC.
CQ–823952–02	NOWCC.
CQ–823973–02	NOWCC.
CQ–824021–02	NOWCC.
CQ–824417–02	NOWCC.
CQ–824455–02	NOWCC.
CQ–824714	National Caucus and Center on Black Aged, Inc.
CQ–824715	NCBA.
CQ–824716	NCBA.
CQ–824717	NCBA.
CQ–824718	NCBA.
CQ–825083	NCBA.
CQ–825084	NCBA.
CQ–825085	NCBA.
CQ–825086	NCBA.
CQ–825087	NCBA.
CQ–826277–01	NCBA.
CQ–826278–01	NCBA.
CQ–826377	NCBA.
QS–823447	NCBA.
CQ–822261	National Association for Hispanic Elderly.
CQ–825236	NAHE.
CQ–826228	NAHE.
CQ–826229	NAHE.
QS–823047	NAHE.
CQ–824362	National Council On the Aging, Inc.
CQ–824363	NCOA.
CQ–824364	NCOA.
CQ–825438	NCOA.
CQ–825527	NCOA.
CQ–826218	NCOA.
CQ–822533	National Senior Citizens Education and Research Center.
CQ–822769	NSCERC.
CQ–824298	NSCERC.
CQ–824299	NSCERC.
CQ–824399	NSCERC.
CQ–824721	NSCERC.
CQ–825529	NSCERC.
CQ–825530	NSCERC.
CQ–826279–01	NSCERC.
CQ–822810–02	National Asian Pacific Center on Aging.
CQ–825520	NAPCA.
CQ–825447	NAPCA.
CQ–825448	NAPCA.
CQ–826340	NAPCA.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h)(2)(iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are require to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: June 16, 1998

Donald W. Sadler,

Director, Human Resources Staff for OA, OIA, OARM, OCFO and SES.

[FR Doc. 98–16567 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6114–1]

Notice of Proposed Administrative De Micromis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Pollution Abatement Services Superfund Site, Oswego, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative "de micromis" settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (Site). The Site is located near the eastern boundary of the City of Oswego, New York. The Site is included on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (Order) between EPA and Corning Incorporated, Borg-Warner Automotive, Inc. on behalf of Morse Chain (Borg-Warner Corporation), and Unisys Corporation (Respondents). Respondents individually contributed a minimal amount of hazardous substances to the Site and are eligible for a de micromis settlement under EPA's policies and section 122(g) of CERCLA. This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to this agreement.

DATES: Comments must be provided on or before July 22, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Pollution Abatement Services Superfund Site, U.S. EPA Index No. II–CERCLA–98–0204." For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007, telephone: (212) 637–3177,

Dated: June 11, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–16568 Filed 6–19–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–888]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 11, 1998, the Telecommunications Division of the International Bureau of the Federal Communications Commission adopted an Order modifying the exclusion list that prohibits U.S. carriers from making use of non-U.S. licensed facilities. The Commission removed the following facilities from the exclusion list: U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES. This decision will reduce the regulatory burden on U.S. carriers seeking to obtain capacity on these facilities and should make the market for cable access more competitive, leading to lower prices for U.S. carriers' end users.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Adam Krinsky, Attorney, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1099.

SUPPLEMENTARY INFORMATION: This is a summary of the Telecommunications Division's Order adopted on May 11, 1998 and released on May 13, 1998 (DA 98–888). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. The Order also is available as a text file at <http://www.fcc.gov/Bureaus/International/Orders/1998/da980888.txt>. It is available as a WordPerfect file at <http://www.fcc.gov/Bureaus/International/Orders/1998/da980888.wp>.

Summary of Order

1. On February 29, 1996, the Federal Communications Commission adopted rules to streamline the international Section 214 authorization process and tariff requirements. (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, released March 13, 1996, 61 FR 15724, April 9, 1996). The Report and Order adopted procedures for issuing global, rather than country-specific and facility-specific, Section 214 authorizations to qualified applicants. As part of the new procedures, the Commission required the International Bureau to establish and maintain an exclusion list identifying restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization. On July 26, 1996, the International Bureau adopted the exclusion list. (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, DA 96–1205, released July 29, 1996, 61 FR 50023, September 24, 1996). The exclusion list was subsequently modified on October 22, 1996 (Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, DA 96–1752, released October 24, 1996, 61 FR 58689, November 18, 1996).

2. On December 29, 1997, PLD Telekom Inc. (PLD) requested authority to provide authorized and future services using the following non-U.S.-licensed facilities not yet identified as exceptions to the Commission's exclusion list: U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES (*See* PLD Telekom, File No. ITC–98–040, filed December 29, 1997). No parties opposed PLD's request.

3. With regard to the cable facilities identified by PLD, we do not find any imperative circumstances that warrant their continued exclusion. Removal of these cable systems from the exclusion list will reduce the regulatory burden on U.S. carriers wishing to obtain capacity on these facilities and should make the market for cable access more competitive, leading to lower prices for U.S. carriers' end users. We therefore find that the public interest will be served by removing the requested facilities from the exclusion list. The U.K.-German-6, FLAG, all cables on the Sweden-Finland route, Ulysses, and HERMES cables will therefore be added to the facilities specified as excepted from the exclusion list. This modification of the exclusion list allows any U.S. facilities-based carrier with global Section 214 authorization to use these cable systems.

Ordering Clauses

4. Accordingly, *it is ordered* that the Exclusion List attached to this order, which identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization, is hereby adopted.

5. This order is issued under § 0.261 of the Commission's rules, 47 CFR 0.261, and is effective upon adoption. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Commission's Rules may be filed within 30 days of the date of the public notice of this Order (*See* 47 CFR 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division, International Bureau.

Attachment

International Section 214 Authorizations; Exclusion List as of May 11, 1998.

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules. 47 CFR 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.01 of the Commission's Rules, unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.8(e)(6) of the Commission's Rules. 47 CFR 63.18(e)(6).

Countries

Cuba (applications for service to this country shall comply with the separate filing requirements of the Commission's Public Notice Report No. I–6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities

All non-U.S. licensed Cable and Satellite Systems ExceptForeign Cable Systems.

Aden-Djibouti
APC
APCN
APHRODITE 2
ARIANNE 2
ASEAN
B–M–P
Brunei-Singapore
CADMOS
CANTAT–3
CARAC
CELTIC
China-Japan
CIOS
Denmark-Russia
ECFS
EMOS–1
EURAFRICA
FLAG
Germany-Denmark 1
Germany-Sweden No. 4
Germany-Sweden No. 5
H–J–K
HERMES
HONTAI–2
ITUR
KATTEGAT–1

Kuantan-Kota Kinabalu
LATVIA-SWEDEN
Malaysia-Thailand
Marseille/Palermo Link
MAT–2
ODIN
PENCAN–5
R–J–K
RIOJA
SAT–2
SEA–ME–WE 2
SEA–ME–WE 3
Sweden-Finland
T–V–H
TAGIDE 2
TASMAN 2
UGARIT
UK–BEL 6
UK-Denmark 4
UK-Germany 5
UK-Germany 6
UK-Netherlands 12
UK-Netherlands 14
UK-Spain 4
Ulysses
Unisur

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission will then release an order amending the exclusion list. The list also is subject to change upon issuance of an Executive Order. See Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118, FCC 96–79, released March 13, 1996.

For additional information, contact the International Bureau's Telecommunications Division, Policy and Facilities Branch, (202) 418–1460.

[FR Doc. 98–16515 Filed 6–19–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 12, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission.

OMB Control No.: 3060–0789.

Expiration Date: 06/30/2001.

Title: Modified Alternative Plan, CC Docket No. 90–571, Order ("1997 Suspension Order").

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 35 respondents; 13.48 hour per response (avg.); 472 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Title IV of the Americans with Disabilities Act of 1990 ("ADA") requires each common carrier providing voice transmission services to provide Telecommunications Relay Services ("TRS") throughout the area it serves to individuals with hearing and speech disabilities by 1993. The TRS enables customers with hearing or speech disabilities to use the telephone network in ways that are "functionally equivalent" to those used by customers using traditional telephone service. Under the Commission's rules, the TRS must be able to handle all calls normally provided by common carriers, unless those carriers demonstrate the infeasibility of doing so. 47 CFR 64.604(a)(3). The Commission has interpreted "all calls" to include coin sent-paid calls, which are calls made by depositing coins in a standard coin-operated public payphone. The Bureau has suspended enforcement of the requirement that carriers provide coin sent-paid calls through the TRS centers since 1993 based on common carriers' representations that it has been technically infeasible to provide the coin sent-paid service through the TRS centers ("coin sent-paid rule"). Since 1995, carriers have made payphones accessible to TRS users through an Alternative Plan ("Alternative Plan"). The Alternative Plan enables TRS users to make local relay calls for free and to make toll calls from payphones using calling or prepaid cards at or below the coin call rates. The Alternative Plan also requires carriers to educate TRS users about the alternative payment methods for the TRS users to make relay calls from payphones. In an Order issued in Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90–571 (adopted August 20, 1997; released August 21, 1997), the Common Carrier Bureau ("Bureau") suspended the enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one year until August 26, 1998 because the only technological solution that can provide the coin sent-paid calls through the TRS centers, coin signalling interface ("CSI"), has serious deficiencies and no new technological solution appears imminent. In the Order, the Bureau recommends that during the one year suspension, the Commission conduct a rulemaking on coin sent-paid issues to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. In addition, the Bureau directed the industry to continue to make payphones accessible to TRS users under the terms of the Alternative Plan, as set forth in Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Memorandum Opinion and Order, 10 FCC Rcd 10927 (1995) ("*1995 Suspension Order*"), and as modified by the Order. The Order modifies the Alternative Plan by requiring industry to: (1) send a consumer education letter to TRS centers (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4 hours); (2) inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry booth will be located, and at what times the booth will be in operation (no. of respondents: 1; hour burden per respondent: 15 minutes; total annual burden: 1.5 hours); (3) publish an article in Consumer Action Network ("CAN's") respective organizations' magazines or newsletters (no. of respondents: 1; hour burden per respondent: 8 hours; total annual hour burden: 8 hours); (4) send a letter directly to all CAN's members (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden: 4 hours); and, (5) create laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones to be distributed to TRS users (no. of respondents: 30; hour burden per respondent: 15 hours; total annual hour burden: 450 hours). The Commission has imposed these third party disclosure requirements to educate TRS users about their ability to make relay calls from payphones, the payment methods available and the rates for the payphone calls. Obligation to respond: Required.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 98–16419 Filed 6–19–98; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 16334.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 25, 1998, 10:00 a.m., meeting open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Audit: 1966 Committee on Arrangements for the Republican National Convention.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 98–16614 Filed 6–18–98; 10:53 am]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 A.M., Wednesday, June 24, 1998.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Policy Statement—Federal Home Loan Bank System Financial Disclosure.
- Final Rule—Financial Disclosures by Federal Home Loan Bank.
- Final Rule—Membership Regulation Revisions.
- Proposed Settlement Agreement Regarding the Federal Home Loan Bank of Des Moines Petition.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,
Managing Director.
[FR Doc. 98–16596 Filed 6–17–98; 5:05 pm]
BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 6, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Julia Dobbins, Fort Worth, Texas, and Jean Lauder, Mercedes, Texas; to acquire additional voting shares of Mercedes Bancorp, Inc., Mercedes, Texas, and thereby indirectly acquire additional voting shares of Mercedes National Bank, Mercedes, Texas.

Board of Governors of the Federal Reserve System, June 16, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–16422 Filed 6–19–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Jeanette M. Doty and Jane Ferrier, The Jeanetter Metherell Doty Trust, Lajolla, California; to retain 15.88 percent of the voting shares of First Community Financial Corporation, Mifflintown, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Teebank Family Limited Partnership, Prospect, Kentucky; to acquire 31.59 percent of the voting shares of Republic Bancorp, Inc., Louisville, Kentucky, and thereby indirectly acquire Republic Bank and Trust, Louisville, Kentucky.

Board of Governors of the Federal Reserve System, June 17, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–16542 Filed 6–19–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Danvers Bancorp, Inc., Danvers, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Danvers Savings Bank, Danvers, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. One Valley Bancorp, Inc., Charleston, West Virginia; to acquire 100 percent of the voting shares of Summit Bankshares, Inc., Raphine, Virginia, and thereby indirectly acquire Bank of Rockbridge, Raphine, Virginia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First American Bankshares, Inc., Fort Atkinson, Wisconsin; to acquire 100 percent of the voting shares of Jefferson County Bancorp, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Jefferson County Bank, Jefferson, Wisconsin.

Board of Governors of the Federal Reserve System, June 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16423 Filed 6–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. UST Corp., Boston, Massachusetts; to acquire and thereby merge with Affiliated Community Bancorp, Waltham, Massachusetts, and thereby indirectly acquire Lexington Savings Bank, Lexington, Massachusetts; and Middlesex Bank & Trust Company, Newton, Massachusetts.

In connection with this application, Applicant also has filed to acquire the Federal Savings Bank, Waltham, Massachusetts, and thereby operate a federal savings bank, pursuant to § 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Second Bancorp Incorporated, Warren, Ohio; to merge with Enfin, Inc., Solon, Ohio, and thereby indirectly acquire Enterprise Bank, Solon, Ohio.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First American Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of The Middle Tennessee Bank, Columbia, Tennessee.

2. Synovus Financial Corp., and TB&C Bancshares, Inc., both of Columbus, Georgia; to merge with Community Bank Capital Corporation, Alpharetta, Georgia, and thereby indirectly acquire Bank of North Georgia, Alpharetta, Georgia.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. The Connor Trusts, Marshfield, Wisconsin; to acquire 51 percent of the voting shares of Pioneer Bancorp, Inc., Auburndale, Wisconsin, and thereby indirectly acquire Pioneer Bank, Auburndale, Wisconsin.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Hoosier Hills Financial Corporation, Osgood, Indiana, and thereby indirectly acquire The Ripley County Bank, Osgood, Indiana.

Board of Governors of the Federal Reserve System, June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16543 Filed 6–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank AG, Frankfurt am Main, Germany; to acquire German American Capital Corporation, New York, New York, and thereby engage in acquiring debt that is in default at the time of acquisition, pursuant to § 225.28(b)(2)(vii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 17, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16541 Filed 6–19–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0364]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on product specific reports and recordkeeping requirements for certain electronic products.

DATES: Submit written comments on the collection of information by August 21, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping for Electronic Products: Specific Product Requirements 21 CFR Parts 1020, 1030, 1040, and 1050 (OMB Control Number 0910–0213—Reinstatement)

Under sections 532 to 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii to 360ss), FDA has the responsibility to protect the public from unnecessary exposure to radiation from electronic products. Section 532 of the act (21 U.S.C. 360ii) directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic radiation by, among other things, developing and administering performance standards for electronic products. Section 534(g) of the act (21 U.S.C. 360kk(g)) directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act (21 U.S.C. 360ll(e) and (f)) directs the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliance with performance standards. The agency's authority to require records and reports is contained in section 537(b) and (c) of the act (21 U.S.C. 360nn(b) and (c)).

Under this authority, FDA issued regulations detailing product-specific performance standards that specify information to be supplied with the product or require specific reports.

The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

The consequence of not obtaining the required information is that the public unknowingly may be exposed to unnecessary radiation hazards presented by electronic products. Without this information, FDA could not adequately make rational decisions and take appropriate actions to protect the public from these hazards as called for in the act.

Respondents to this collection of information are manufacturers, importers, and assemblers of electronic products. Not all of the requirements are placed on all of these groups.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.20(c)(4)	1	1	1	1	1
1020.30(g)	200	1.33	265	35	9,275

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)[2]*	200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)[2]*	9	1.00	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)	8	1.00	8	40	320
1030.10(c)(4)	41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)[2]*	41	1.61	66	20	1,320
1040.10(h)(1)(i) through (h)(1)(iv)	805	1.00	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)[2]*	100	1.00	100	8	800
1040.11(a)(2)[2]*	190	1.00	190	10	1,900
1040.20(d)(1), (d)(2), (e)(1), and (e)(2)	110	1.00	110	10	1,100
1040.30(c)(1)	1	1.00	1	1	1
1050.10(f)(1) and (f)(2)(i) through (f)(2)(iii)	10	1.00	10	56	560
Disclosure Subtotal	1,176		1,896		32,672
1020.30(d)(1) and (d)(2) and Form FDA 2579	2,345	8.96	21,000	.30	6,300
1030.10(c)(6)(iii) and (c)(6)(iv)	1	1.00	1	1	1
1030.10(c)(6)(iv)	1	1.00	1	1	1
1040.10(a)(3)(i)	83	1	83	3	249
1040.10(i)—burden in 1002.10 (0910–0025)	0		0	0	0
Reports Subtotal	2,430		21,085		6,551
Total Annual Reporting Burden	3,606	6.37	22,981	1.71	39,223

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]The total number of respondents in the reporting burden, Table 1, include respondents who have already been included as a subset of another group in the table. The number of firms marked by an asterisk have been included and counted as a subset of the total firms subject to reporting burden. Therefore, the number of firms represented by an asterisk have not been added to the total number of respondents on the entry for "Disclosure Subtotal," and are not included in the total listed on the last entry of the reporting burden table entitled "Total Annual Reporting Burden." However, any hours of burden generated by these firms were added to the total reporting burden hours on both the disclosure subtotal and total lines of the reporting burden table.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1020.30(q)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1	83
1040.30(c)(2)	7	1	7	1	7
Total Annual Recordkeeping Burden					101

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Certain labeling requirements included in these regulations are either exempt from the definition of "collection of information" under 5 CFR 1320.3(c)(2) because they are "public disclosure[s] of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" or have negligible burden. For example, 21 CFR 1040.10(g) states that "in addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph." The provision goes on to require several cautionary statements in the labeling of laser products approved under this regulation, and further specifies the wording, placement and label design of the required labeling.

21 CFR 1040.30(c)(1), 1050.10(d)(1) through (d)(5), and 1020.10(c)(4) are labeling requirements which are exempt from OMB.

The burden hour and cost estimates were derived by consultation with FDA and industry personnel. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the "Estimated Annual Reporting Burden" table .

Dated: June 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16503 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0431]

EM Industries, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that EM Industries, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of synthetic iron oxide to color ingested drugs at levels higher than the current limit and to provide for the safe use of mica to color ingested drugs.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0257) has been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532. The petition proposes to amend the color additive regulations to provide for the safe use of synthetic iron oxide to color ingested drugs at levels higher than the current limit and to provide for the safe use of mica to color ingested drugs.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 10, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–16504 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F–0432]

Ticona; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ticona has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chromium oxide green, Cr_2O_3 (C.I. Pigment Green 17) as a colorant for polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4603) has been filed by Ticona, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of chromium oxide green, Cr_2O_3 (C.I. Pigment Green 17) as a colorant for polymers intended for use in contact with food. The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–16505 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) (A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for NHSC Recruitment and Retention Assistance and Waiver of NHSC Site Bill—(in use Without Approval)

The National Health Service Corps (NHSC) of the HRSA's Bureau of Primary Health Care, assists underserved communities through the development, recruitment, and retention of primary health care clinicians dedicated to serving people in health professional shortage areas.

The Application for NHSC Recruitment and Retention Assistance submitted by sites or clinicians requests information on the practice site, sponsoring agency, recruitment contact, staffing levels, service users, site's 5-year infant mortality or low birth rate averages, and next nearest site. Assistance in completing the application may be obtained through the appropriate State Primary Care Offices, State Primary Care Associations and HRSA field offices. A form requesting a waiver of the NHSC site bill for a calendar year may be requested at the same time. The information on the application is used for determining eligibility of sites and to verify the need for NHSC providers. Sites must submit applications annually or when they need a provider. The request for a waiver is used to suspend the educational and loan repayment costs of NHSC providers.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hour
Application	1,000	.75	750
Waiver	738	4	2,952
Total	1,000		3,702

Send comments to HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 15, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–16452 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Substance Abuse Treatment Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

This proposed information collection was previously in the **Federal Register** on October 27, 1997, and allowed 60 days for public comment. There were no requests for additional information about this data collection activity, no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after December 31, 1999, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Substance Abuse Treatment Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The information proposed for collection in this study will be used by the NIAAA to observe group treatment at up to 20 treatment facilities. At each facility, directors will be asked to provide information about treatment practices and about the client population. At each facility at least seven members of the treatment staff will be asked to provide information about their treatment activities, personal experiences and training. At each facility eight treatment groups will be observed. The group leader will be asked to complete a questionnaire about the observed session and other client demographics. At least seven group members will also be asked to complete a questionnaire about the observed group session. The target population for the study is a group of outpatient public and private providers that will include group treatment as part of their overall plan of clinical therapeutics.

The specific aim of this study is the testing of instruments and methodologies for the systematic measurement of the content, process, and context of group treatment.

Frequency of Response: On occasion. *Affected Public:* Individuals. *Type of Respondents:* American adults. *Estimated Number of Respondents:* 1440. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* .3465. *And Estimated Total Annual Burden Hours Requested:* 449. *The annualized cost to respondents is estimated at:* $5,676. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Facility Director—20	1	20	.75	15
Group Leader—80	2	160	.334	55
Treatment Staff—140	1	140	.334	48
Group Member—560	2	1120	.334	381
Total Number of Respondents		1440		
Total Number of Responses		1440		
Total Hours		499		

Request for Comments: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Willco Bldg., Suite 505, 6000 Executive Blvd., Bethesda, Maryland 20892–7003.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Margaret Mattson, Treatment Research Branch, Division of Clinical and Prevention Research, NIAAA, NIH, Willco Bldg., Suite 505, 6000 Executive Blvd., Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–0638.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 22, 1998.

Dated: April 6, 1998.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 98–16424 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco use Supplement to the 1998–1999 Current Population Survey"

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National

Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 26, 1998, page 14721 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco use Supplement to the 1998–1999 Current Population Survey". Type of Information Request: OMB #0925–0368, Exp. 3/31/97, REINSTATEMENT, with change. Need and Use of Information Collection: The "Tobacco use" supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, smoking intervention dissemination of workplace smoking policies and cessation programs, and changes in smoking norms and attitudes. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale, 17-state demonstration project. This survey will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. The survey will allow state specific estimates to be made. Data will be collected in September 1988, January 1999 and May 1999 from approximately 255,000 respondents. Frequency of Response: One-time study. Affected Public: Individuals or households. Type of Respondents: Persons 15 yrs of age or older. The annual reporting burden is as follows: Estimated Number of Respondents: 170,000; Estimated Number of Responses per Respondent: 1; Average Burden Hours per Response: .1169; and Estimated Total Annual Burden Hours Requested: 19,873. The annualized cost to respondents is estimated at: $198,727. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Statistician, National Cancer Institute, Executive Plaza North, Room 313, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4970, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne_Hartman@nih.gov.

Comments due date: Comments regarding this information collection are best assured of having their full effect if received on or before July 22, 1998.

Dated June 11, 1998.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 98–16428 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug and Method To Prevent and Treat Graft-Versus-Host Disease and Allograft Rejection

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is seeking Licensees to further develop, evaluate, and commercialize anti-Tac(Fv)–PE38, also known as LMB2. Anti-Tac(Fv)–PE38 is a recombinant toxin composed of the Fv portion of the anti-Tac antibody which binds to the a subunit of the IL2 receptor (also called P55, Tac, or CD25) fused to PE38 a mutant form of *Pseudomonas* Exotoxin A. Anti-Tac (Fv)–PE38 is very cytotoxic to normal or malignant cells expressing IL2 receptors and is being developed for several proposed applications including (1.) the prevention of Graft-versus Host Disease ("GVHD") by purging bone marrow of potentially recipient-reactive donor T-cells, (2.) the treatment of Graft-versus Host Disease by i.v. administration, and (3.) the treatment or prevention of allograft rejection. The goal is to move this methodology into clinical trials. The inventions claimed in USPN 4,892,8927, Entitled: "Recombinant *Pseudomonas* Exotoxins: Construction of an Active Immunotoxin with Low Side Effects"; USSN 07/865,722, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,696,237, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; and USSN 08/461,825, Entitled: "Recombinant Antibody-Toxin Fusion Protein"; are available for either exclusive or nonexclusive licensing for these aforementioned applications (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" on or before September 21, 1998 for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NCI on or before September 21, 1998 for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 206; Facsimile: (301) 402–0220; E-Mail: "DixonJ@OD.NIH.GOV". Information about Patent Applications and pertinent information not yet publicly described

can be obtained under the terms of a Confidential Disclosure Agreement.

Depending upon the mutual interests of the Licensee(s) and the NCI, a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the Anti-Tac (Fv)-PE38 may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Ms. Karen Maurey, Acting Deputy Director, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Boulevard, Room 450, Rockville, Maryland 20852; Telephone: (301) 496–0477; Facsimile: (301) 402–2117. Respondees interested in submitting a CRADA. Proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: Bone marrow transplantation ("BMT") is an useful therapy for the treatment of various malignant and nonmalignant genetic and acquired blood disorders which are otherwise incurable. However, a significant limitation of using allogeneic BMT is that only a minority (less than 30%) of patients have an HLA-identical sibling donor. The use of phenotypically matched unrelated donors can only partially overcome this problem, mainly because the time needed to search for an acceptable donor is often too long for patients with advanced disease. Another problem is that ethnic or racial minorities are under-represented in the volunteer bone marrow donor registries. As a result, the chances of finding an unrelated matched donor for such patients is limited.

Graft-versus-Host disease is one of the most frequent complications of allogenic BMT, and is particularly difficult to control in the mismatched setting. Not only does severe GVHD impact greatly on the quality of life of the transplant recipient, as well as contribute significantly to the cost of therapy, but it is the major cause of patient mortality either directly or indirectly (e.g. opportunistic infections due to long-term immunosuppressive therapy).

As has been well documented, GVHD is the result of alloreactive T-cells in the bone marrow graft that are capable of recognizing and attacking the tissues of the immunosuppressed recipient. As it also known, upon recognition and activation by foreign antigen, T-cells express the receptor for interleukine 2 ("LL–2)—which offers a possible method for the removal of alloreactive T-cells. If it were possible to eliminate the presence of contaminating recipient-alloreactive T-cells in the bone marrow graft, thus preventing or reducing the severity of GVHD, allogeneic transplantation might find greater applications and use in the treatment of a variety of other diseases (e.g., autoimmune diseases such as rheumatoid arthritis, etc.). In cases where haploidentical related donors may be readily available to serve as a donor, specific T-cell depletion would permit the haploidentical donor's immunity to be transferred with the graft while preventing severe GVHD, thus improving the overall patient outcome

While GVHD can be prevented by extensive non-selective T-cell depletion of the bone marrow graft, this procedure increases the risk of infection and graft rejections. In HLA genotypically identical sibling transplant, GVHD can be controlled somewhat through the use of immunosuppressive therapy (e.g., Cyclosporin, Methotrexate, etc.). However, such therapeutic modalities are much less effective in the mismatched setting and are associated with susceptibility to bacteria and viral infections, development of new malignancies, and end organ failure.

NIH/NCI scientists at the National Cancer Institute have developed and evaluated in animal models, a recombinant immunotoxin (e.g., Anti-Tac (Fv)/PE38) which kills activated T-cells at very low immunotoxin concentrations. The subject Immunotoxin is a single chain protein composed of the Fv portion of an antibody fused to the amino terminus of the PE. The toxin has three domains: IA is responsible for cell binding, II is required for translocation and has the proteolytic processing site, and III has the ADP-ribosylating activity. After call internalization, a truncated form of PE, generated by proteolytic cleavage translocates to the cytosol where ADP-ribosylation of elongation factor 2 terminates protein synthesis causing cell death.

NIH/NCI scientists have shown that Anti-Tac(Fv)–PE38 may prevent and reduce the severity of GVHD by specific elimination or reduction of recipient-alloreactive donor T-cells without adversely affecting other T-cell population or compromising stem cell engraftment and recipient hematopoietic rescue and survival. These experiments have demonstrated that it is possible to inexpensively and selectively eliminate or reduce the numbers of alloreactive T-cells present in a bone marrow graft resulting in prevention of or a reduction in the severity of GVHD after bone marrow transplantation procedures, but does not compromise stem cell engraftment and recipient hematopoietic rescue and survival. The methodology is simple and does not involve significant lengths of time or specialized equipment. Thus it should be possible to transition these findings to the clinical situation without significant problems. If clinical results approximate the observed animal finding it might then be possible to utilize BMT in many other disease conditions.

In addition NIH/NCI scientists have shown in a Phase I Trial that Anti-Tac(Fv)–PE38 can be safely administered intravenously to patients with cancer; good blood levels of the immunotoxin are also achieved. Thus Anti-Tac(Fv)–PE38 may also be used to treat patients with GVHD or the treat patients undergoing allograft rejection.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of Anti-Tac(Fv)–PE38. The expected duration of the CRADA would be from one (1) to five (5) years.

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of Anti-Tac(Fv)–PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cyotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
4. Providing technical and/or financial support to facilitate scientific goals and for further design of

applications of the technology outlined in the agreement.

5. Providing immunotoxin for laboratory and animal studies.

6. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

2. The demonstration of adequate resources to perform the research and development of this technology (e.g., facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

4. The demonstration of expertise in the commercial development and production of products related to this area of technology.

5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of immunotoxin in the prevention or treatment of graft-versus-host disease and/or allograft rejection.

7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the right of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant for an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: June 11, 1998.

Kathleeen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

Dated: April 30, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 98–16427 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug and Method for the Therapeutic Treatment of Ovarian Cancer and Mesotheliomas

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is a seeking Licensee(s) and/or Cooperative Research and Development Agreement ("CRADA") Collaborators to further develop, evaluate, and commercialize a recombinant immunotoxin, termed SS(dsFv)–PE38. SS(dsFv)–PE38 is a disulfide-linked recombinant immunotoxin fused to PE38, a mutant form of *Pseudomonas* Exotoxin, that binds to mesothelin. Mesothelin is a differentiation antigen present on the surface of most ovarian cancers, mesoltheliomas, and several other types of human cancers including cervical cancer. In normal tissue, mesothelin is limited in its expression to mesothelial cells and basal cells of the trachea (low expression). Therefore, it represents an excellent target for antibody-mediated delivery of cytotoxic agents. The antigen is a 40 kD glycoprotein that is attached to the cell surface by phosphatidylinositol. SS (dsFv)–PE38 immunotoxin is very cytotoxic to cancer cells expressing mesothelin and binds with an affinity of approximately 11 nanomolar. The SS (dsFv)–PE38 immunotoxin also produces complete regressions of mesothelin containing solid tumors growing in nude mice. The goal is to move this drug and methodology into clinical trials. The invention is claimed in USPA SN 08/776,271 and PCT patent application PCT/US97/00224, entitled: "Mesothelin, A Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers and Methods and Kits for targeting the Antigen" and is available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" on or before September 21, 1998 for priority consideration.

Interested CRADA Collaborators must submit a confidential proposal summary to the NCI on or before September 21, 1998 for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 206; Facsimile: (301) 402–0220; E-Mail: "DixonJOD.NIH.GOV". Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions".

Depending upon the mutual interests of the Licensee(s) and the National Cancer Institute ("NCI"), a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the SS(dsFv)–PE38 immunotoxin may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Ms. Karen Maurey, Acting Deputy Director, National Cancer Institute, Technology Development & Commercialization Branch, 6120 Executive Plaza South-Room 450, Rockville, Maryland 20852; Telephone: (301) 496–0477; Facsimile: (301) 402–2117. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: NIH/NCI scientists have done toxicity studies with the SS(dsFv)-PE38 immunotoxin in mice and with an earlier single chain variant (SSFv-PE38) in Cynomolgus monkeys. Treatment of mice with 5μg

QOD × 3 (0.25 mg/kilo) produced complete tumor regressions without death or toxicity. Since the antibody does not react with mouse mesothelin, possible toxicities in mice are due to non-specific (liver) toxicity. NIH/NCI scientists have also administered this aforementioned single chain form to monkeys. SS(Fv)-PE38 reacts just as strongly with monkey mesothelin as it does with human mesothelin, and therefore, one would expect the monkey to be a good predictor of toxicity in humans. At a 0.05 mg/kilo dose level, no toxicity was experienced. A second monkey received 0.5 mg/kilo and showed a transient elevation in liver enzymes and non-specific physical signs (inactivity), but fully recovered.

In the United States, an estimated 15,000 patients die of ovarian cancer each year despite therapy. Although less common, mesotheliomas are known to be resistant to all chemotherapeutic agents. Development of new therapeutic modalities to treat these malignancies is needed.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of the SS(dsFv)-PE38 immunotoxin.

The rule of the NCI in the CRADA may include, but are not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of the SS(dsFv)-PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cytotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
4. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
5. Incorporating the immunotoxin into liposomes or producing other formulations in order to increase the therapeutic efficacy.
6. Providing immunotoxin for laboratory and animal studies.
7. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
2. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
4. The demonstration of expertise in the commercial development and production of products related to this area of technology.
5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of the SS (dsFv)-PE38 immunotoxin for the treatment of ovarian cancer and mesotheliomas.
7. The demonstration of expertise in the formulation of drugs into liposomes or other delivery vehicles.
8. The willingness to cooperate with the NCI in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: May 18, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

Dated: May 26, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98–16426 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Novel Antitumor Macrocyclic Lactones, Compositions and Methods of Use

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees for the further development, evaluation and commercialization of materials and methods for novel cancer treatment agents. The invention claimed in DHHS Reference No. E–244–97/0, "Novel Antitumor Macrocyclic Lactones, Compositions and Methods of Use," (Boyd, M. et al.) filed on 29 June 1997 as USSN 60/053,784, is available for licensing (in accordance with 35 USC 207 and 37 CFR Part 404).

ADDRESSES: Questions about the licensing opportunity should be addressed to Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7056 ext. 263; Fax: 301/402–0220.

SUPPLEMENTARY INFORMATION: The invention relates to a series of macrocyclic lactones based on compounds isolated from certain marine sponges and tunicates. These compounds have *in vitro* activity against certain human solid tumors, including non-small cell lung cancer, renal cancer and melanoma, all important killers which are resistant to currently used drugs.

Of particular interest is the cell-line activity profile of these lactones, which indicates a novel mechanism of action. Such compounds hold the promise of *in*

vivo activities unlike those seen with current drugs. These lactones thus have the potential for use as therapeutics alone or in combination with existing drugs.

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention will be required to submit an Application for License to Public Health Service Inventions.

Dated: June 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–16425 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDKI GRB–4(02).

Date: July 15–16, 1998.

Time: July 15, 1998, 7:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5 Boston, MA 02114.

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16430 Filed 6–19–98; 8:45 am]

BILLING CODE 1410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(03).

Date: June 30, 1998.

Time: 3:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 6AS.25S, MD 20892 (Telephone Conference Call).

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 12, 1998.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16431 Filed 6–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–7(67).

Date: June 22–23, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, sss–x(6).

Date: June 22, 1998.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–7 (68).

Date: June 25–26, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Woodfin Suite Hotel, 1380 Piccard Drive, Rockville, MD 20850.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Behavioral and Neurosciences Special Emphasis Panel.
Date: June 29–July 1, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Clarion Hampshire Hotel, Washington, DC.
Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7–SSS–X (07).
Date: June 29, 1998.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD(2).
Date: June 30, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.
Date: July 1–3, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.
Date: July 1–2, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 4435–1041.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (04).
Date: July 1, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel MEDB (01).
Date: July 6, 1988.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Multidisciplinary Sciences Special Empahasis Panel, ZRG7–SAT (1S).
Date: July 7–8, 1998.
Time: 6:00 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Bethesda, 8400 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Gerald Becker, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 8, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7850, Bethesda, MD 20892, (301) 435–1177.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel SSS–Z.
Date: July 8, 1998.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 9, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2102 Wisconsin Ave, Washington, DC 20007.
Contact Person: Eileen Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG5 AARR–2 (01).
Date: July 9–10, 1998.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel.
Date: July 9, 1998.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7850, Bethesda, MD 20892, (301) 435–1177.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Chemistry and Related Sciences SEP ZRG3 PBC(1).
Date: July 9, 1998.
Time: 3:00 pm to 6:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (03).
Date: July 9, 1998.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.

Date: July 9–10, 1998.

Time: 7:00 pm to 5:00 pm.

Agenda: To review evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD, 20815.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Metallobiochemistry Study Section.

Date: July 10, 1998.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel, Special Emphasis Panel.

Date: July 10–11, 1998.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Clinical Sciences Special Emphasis Panel, ZRG4 HPD (7).

Date: July 10, 1998.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, Phd, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Multidisciplinary Sciences Special Emphasis Panel, ZRG7 SSS–8 (46).

Date: July 13–14, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Nadarajen Vydelingum, Phd, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176.

Name of Committee: Behavioral and Neurosciences Special Emphasis Panel.

Date: July 13–14, 1998.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7848, Bethesda, MD 20892.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.

Date: July 15, 1998.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 10892 (Telephone Conference Call).

Contact Person: Raymond Bahor, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3048, MSC 7766, Bethesda, MD 20892, (301) 435–0903.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.

Date: July 15, 1998.

Time: 12:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Everett Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892. (301) 435–1016, ev__sinnett@nih.gov.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel, ZRG5 AARR–6 (01).

Date: July 20–21, 1998.

Time: 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sami Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Chemistry and Related Sciences Special Emphasis Panel.

Date: July 20, 1998.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16429 Filed 6–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–841019

Applicant: Dr. Michael C. Wooten, Auburn University, Alabama

The applicant requests authorization to take (capture, tag, release, or translocate) the endangered Alabama Beach mouse, *Peromyscus polionotus ammobates*, Choctawhatchee beach mouse, *P.p. allophrys*, Perdido Key beach mouse, P.p. trissyllepsis, and the (currently proposed for listing as endangered) St. Andrews beach mouse, *P.p. peninsularis*, throughout the species' ranges in Alabama and Florida, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by July 22, 1998.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: June 15, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–16466 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for Higgins' Eye Pearly Mussel, Lampsilis higginsi, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of a technical/agency draft revised recovery plan for the endangered Higgins' eye pearly mussel, *Lampsilis higginsi*. This freshwater mussel is known to presently occur in the Mississippi River from Minneapolis/St. Paul, Minnesota, to approximately the Iowa-Missouri border, near Keokuk, Iowa, with populations also occurring in the Wisconsin River, downstream of Prairie du Sac, Wisconsin; St. Croix River downstream of Taylors Falls, Minnesota-St. Croix Falls, Wisconsin; and Rock River below Steel Dam, at Milan, Illinois, all tributaries to the Mississippi River. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 21, 1998 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Twin Cities Field Office, U.S. Fish and Wildlife Service, 4101 East 80th Street, Bloomington, Minnesota 55125–1665 (telephone 612/725–3548). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received will be available, by appointment, for public inspection during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gerry Bade, Rock Island Field Office, U.S. Fish and Wildlife Service, 4469 48th Avenue Court, Rock Island, Illinois 61201 (telephone 309/793–5800, ext. 520), or contact Mr. Chuck Kjos, Twin Cities Field Office, U.S. Fish and Wildlife Service, 4101 East 80th Street, Bloomington, Minnesota 55425–1665 (telephone 612/725–3548, ext. 206).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for upgrading and recovering them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document under review revises the original Higgins' eye pearly mussel recovery plan, which was approved by the Service in 1983. Since 1983, additional information on the abundance, distribution, biology, and threats to the species has been developed—for example, the species is known today to be somewhat more widespread than was known in 1983 and zebra mussel (*Dreissena polymorpha*), believed today to be a serious threat to Higgins' eye pearly mussel, did not invade U.S. waters until the late 1980s. Endangered species recovery planning today incorporates population concepts and genetic considerations to a greater and more developed degree than it did in 1983 and statistical methods for analysis of mussel populations have advanced significantly since that date. Much recovery work recommended in the 1983 recovery plan remains valid and needs to continue, but the recovery plan needs revision to reflect current knowledge and information of the species' present abundance, distribution, and welfare, as well as actions currently needed for its recovery. The draft revised recovery plan updates information on Higgins' eye pearly mussel abundance, distribution, threats, recommended recovery actions, and recommended criteria for reclassification to threatened status and delisting.

Higgins' eye pearly mussel is known to presently occur in the Mississippi River from Minneapolis/St. Paul, Minnesota, to approximately the Iowa-Missouri border, near Keokuk, Iowa, with populations also occurring in the St. Croix River downstream of Taylors Falls, Minnesota-St. Croix Falls, Wisconsin; Wisconsin River downstream of Prairie de Sac, Wisconsin; and Rock River below Steel Dam, at Milan, Illinois, all tributaries to the Mississippi River. Water quality, navigation, past and present habitat alteration, zebra mussels, incidental loss via legal and illegal harvest of commercial mussel species, natural predation, and loss of genetic variability are addressed in the recovery plan. Recovery efforts will concentrate on protecting the habitat of areas known to support viable Higgins' eye pearly mussel populations and on addressing individually the above identified threats.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan. Comments should be sent to the Field Supervisor, Twin Cities Field Office, at the above address.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1998.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–16469 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30

days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Comments and suggestions on the requirement should be made directly to the Desk Office for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Consolidated Consumers' Report.

Current OMB Approval Number: 1032–0084.

Abstract: Repsondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as monthly and annual reports for use by Government agencies, industry, and the general public.

Bureau Form Number: 9–4117–MA.

Frequency: Monthly and Annually.

Description of Respondents: Consumers of ferrorus and related metals.

Annual Responses: 2,923.

Annual Burden Hours: 2,192.

Bureau Clearance Officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–16506 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Public Comment Period on Proposed Agreement for Leasing of Colorado River Water and Non-Irrigation of Lands on Chemehuevi Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Chemehuevi Indian Tribe entered into an agreement with Southeastern Nevada Water Company, Inc., dated January 31, 1998, for a 25-year lease of 5,000 acre-feet per year of the Tribe's Colorado River water entitlement. The agreement has been submitted to the Secretary of the Interior with a request for the Secretary's approval as a lease of Indian lands within the meaning of 25 U.S.C. 415 and for approval under 25 U.S.C. 81. As part of the Secretary's review, the Bureau of Indian Affairs has determined it is in the public interest to allow an opportunity for interested parties to comment on the proposed lease.

DATES: Any comments must be received by the agency on or before August 6, 1998.

ADDRESSES: If you wish to comment, you may submit your comments to the Area Director, Bureau of Indian Affairs, Attention: Ms. Cathy Wilson, Phoenix Area Office, P.O. Box 10, MS 420, Phoenix, AZ 85004.

SUPPLEMENTARY INFORMATION: The Chemehuevi Indian Tribe is a federally recognized Indian tribe organized under section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476). The Tribe is the beneficial owner of the Chemehuevi Indian Reservation which is located entirely within San Bernardino County, California. On February 2, 1998, the Chemehuevi Indian Tribe provided the proposed Agreement for the Leasing of Reservation Water and for Non-Irrigation of Reservation Lands to the Secretary of the Interior for approval. If the lease is approved by the Secretary, it will become effective upon that approval and remain in effect for a term of 25 years.

Under the proposed lease agreement, the Tribe will lease 5,000 acre-feet of Colorado River water per year to the lessee, Southeastern Nevada Water Company, Inc. The lessee is a for-profit corporation, organized under the laws of the State of Nevada and based in Scottsdale, Arizona. The lessee is authorized to do business in the State of California and will use the water acquired during the period of the lease to meet the present and future water demands of the lessee and any sublessees or assignees in the State of California.

Copies of the lease are available from the Bureau of Indian Affairs at the address listed under **ADDRESSES.** In addition, the Tribe is assessing the environmental impacts of the lease. Any documents created during the environmental compliance process will be made available, as appropriate, from the Bureau of Indian Affairs' Phoenix Area Office at the address listed under **ADDRESSES.**

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Wilson, telephone (602) 379–6789.

Dated: June 15, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–16561 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Agency Action

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency action.

SUMMARY: Notice is hereby given that the Secretary of the Interior has decided to take approximately 146 acres of land, located in New London County, Connecticut, into trust for the Mashantucket Pequot Tribe of Connecticut. The Secretary shall acquire title in the name of the United States no sooner than 30 days after date of this notice. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: The Mashantucket Pequot Tribe of Connecticut submitted an application to acquire approximately 146 acres of land located in New London County, Connecticut, into trust status. Based upon information provided, we have determined that the acceptance of the parcels into trust status is consistent with applicable guidelines and is in the best interest of the Mashantucket Pequot Tribe. The acquisition qualifies for

conversion to trust status pursuant to the provisions of the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 465). The Secretary shall acquire title in the name of the United States of America in trust for the Mashantucket Pequot Tribe of Connecticut no sooner than 30 days after date of this notice according to 25 CFR 151.12(b) (see 61 FR 18083, April 24, 1996), subject to the receipt of satisfactory title evidence in accordance with 25 CFR 151.13.

Fanning Road Tracts

Tract One: Lot number 42 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 819 of the Ledyard Land Records.

Tract Two: Lot number 48 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 215, at Page 189 of the Ledyard Land Records.

Tract Three: Lot number 54 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 219, at Page 488 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 18 which map is on file in the Town of Ledyard Tax Assessor's Office.

Shewville Road Tracts

Tract One: Lot number 812R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 239, at Page 327 of the Ledyard Land Records.

Tract Two: Lot number 854R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 634 of the Ledyard Land Records.

Tract Three: Lot number 858 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 268 of the Ledyard Land Records.

Tract Four: Lot number 871 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 269, at Page 891 of the Ledyard Land Records.

Tract Five: Lot number 875 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 565 of the Ledyard Land Records.

Tract Six: Lot number 879 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 565 of the Ledyard Land Records.

Tract Seven: Lot number 899 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 216, at Page 752 of the Ledyard Land Records.

Tract Eight: Lot number 904 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 242, at Page 295 of the Ledyard Land Records.

Tract Nine: Lot number 929 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 224, at Page 307 of the Ledyard Land Records.

Tract Ten: Lot number 935 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 224, at Page 106 of the Ledyard Land Records.

Tract Eleven: Lot number 938R which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 174, at Page 426 of the Ledyard Land Records.

Tract Twelve: Lot number 943 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 220, at Page 419 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 18 which map is on file in the Town of Ledyard Tax Assessor's Office.

Coachman Pike Tracts

Tract One: Lot number 41 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 551 of the Ledyard Land Records.

Tract Two: Lot number 49 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 226 of the Ledyard Land Records.

Tract Three: Lot number 51 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 612 of the Ledyard Land Records.

Tract Four: Lot number 52 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 68 of the Ledyard Land Records.

Tract Five: Lot number 53 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 233, at Page 530 of the Ledyard Land Records.

Tract Six: Lot number 54 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 234, at Page 262 of the Ledyard Land Records.

Tract Seven: Lot number 56 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 233, at Page 487 of the Ledyard Land Records.

Tract Eight: Lot number 58 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 211, at Page 634 of the Ledyard Land Records.

Tract Nine: Lot number 59 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 232, at Page 257 of the Ledyard Land Records.

Tract Ten: Lot number 60 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 237, at Page 203 of the Ledyard Land Records.

Tract Eleven: Lot number 64 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 223, at Page 23 of the Ledyard Land Records.

Tract Twelve: Lot number 66 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 230, at Page 57 of the Ledyard Land Records.

Tract Thirteen: Lot number 67 which is the designation of this parcel of land by the Ledyard Tax Assessor's Office while a more particular description can be found in Volume 210, at Page 386 of the Ledyard Land Records.

All of the above referenced tracts of land are depicted on the Town Assessor's Map I.D. Number 30 which map is on file in the Town of Ledyard Tax Assessor's Office.

That certain tract or parcel of land situated on the easterly and southerly side of Coachman Pike in the Town of Ledyard, County of New London and state of Connecticut and consisting of the portion of Lot No. 38 on various

plans of Stonehedge subdivision, which portion is located within the definition of private settlement land of the Mashantucket Pequot Tribe as defined by 25 U.S.C. § 1752 and specifically excluding any portion of said lot outside the defined settlement area said tract is bounded and described as follows:

Beginning at a merestone at the northwesterly corner of the herein described tract, said point of beginning being in the easterly street line of Coachman Pike, so-called, at the southwesterly corner of Lot No. 48; thence along Lot No. 48, S. 63°03'30" E. 140.00 feet to an iron pipe; thence N. 83°14'05" E. 350.00 feet to an iron pipe, said point being the northeasterly corner of Lot No. 38; thence S. 06°38'01" E. 175.63 feet to an iron pipe and the southeasterly corner of the within described lot; thence S. 83°14'05" W. 364.53 feet to an iron pipe which is set at the intersection of said line with the settlement boundary; thence 312.00 feet more or less in a northwesterly direction along the settlement boundary to a point on the southerly side of Coachman Pike; thence in a northeasterly direction along said Coachman's Pike approximately 105.00 feet to the point and place of beginning.

Said lot contains 2 acres more or less and consists of that portion of Lot No. 38 as is located within the settlement area and specifically excludes any portion of said lot which is not within said settlement area.

Title to the land described above will be conveyed subject to any valid existing easements for public roads, highways, utilities, pipelines, and any other valid easements or rights-of-way now on record.

Dated: June 12, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–16420 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1430–00]

Temporary Closure of Selected Public Lands and Roads in Pima County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of selected public lands and Roads (route locally known as Indian Kitchen and Dogtown Roads).

SUMMARY: This notice is to inform the public of the Bureau of Land Management's (BLM) decision by the Tucson Field Office Manager of the Tucson Field Office of the temporary road closure of selected public lands under the Field Office's administration. The selected public land roads are located in: *T. 17 S., R. 12 E.*, sections 11, 14 and 15. This action is being taken to provide for public safety and to prevent unnecessary environmental degradation to archaeological sites, soil resources, native vegetation and wildlife.

DATES: This closure is effective May 26, 1998.

ADDRESSES: 12661 E. Broadway Blvd. Tucson, AZ 85748.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Tucson Field Office, 12661 E. Broadway Blvd., Tucson, Arizona 85748, (520) 722–4289.

SUPPLEMENTARY INFORMATION: The unauthorized construction, excavation and road grading of existing roads has damaged archaeological sites, native vegetation and existing roads. Authority for this action is contained in 43 Code of Federal Regulations 8364–1. Violations are punishable as a Class A misdemeanor. This action is taken protect life and property and allow for safe public land use. The following are supplemental rules for the area described above and apply to all persons using public lands. The special rules are in addition to existing rules and regulations previously established under 43 Code of Federal Regulations (CFR) as well as other Federal laws applicable to the use of public land.

Specific restrictions and closures are as follows:

1. All *posted* roads shall be closed to all vehicular use.

2. All roads described above shall be open to BLM authorized and permitted activities on an event specific basis as authorized by the Tucson Field Office Management or his designee.

3. Casual use of these lands such as hiking, and vehicular use on existing two track trails are permitted.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or Pima County. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined up to $100,000.00 and/or imprisoned for not more than 12 months as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581. This closure shall stay enforced until a resolution of the unauthorized use is reached, terminated or modified by the Bureau of Land Management.

Dated: June 15, 1998

Jesse J. Juen,

Field Manager.

[FR Doc. 98–16501 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61891]

Notice of Realty Action: Classification and Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose conveyance.

SUMMARY: The following described public land in Lincoln County, Nevada has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Lincoln County proposes to use the land for *a* Solid Waste Disposal Site.

Mount Diablo Meridian, Nevada

T. 3 S., R. 65 E.,
Sec. 18, S2SW.

Containing 80 acres, more or less.

The land is not required for any federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Ely District Field Office, 702 N. Industrial Way, Ely, Nevada. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for Conveyance under the Recreation and Public Purposes Act,

leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed Conveyance for classification of the lands to the District Manager, Ely District, HC33, Box 33500, Ely, Nevada 89301.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a solid waste disposal facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste disposal site.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right to appeal to the IBLA. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for Conveyance until after the classification becomes effective.

Dated: June 9, 1998.

Gene A. Kolkman,

District Manager, Ely, NV.

[FR Doc. 98–16468 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty-Day Notice of Intention To Request Clearance of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS') intention to request approval of nine information collections to be carried out pursuant to the Government Productivity and Results Act and the NPS Strategic Plan. Seven of the proposed information collections are surveys of customer satisfaction with certain NPS programs and types of assistance. The other two collections seek information on the number of historic properties designated as such and/or protected by State and local governments that have an official partnership with NPS. The information sought through these nine efforts is not currently collected elsewhere.

NPS' National Center for Recreation and Conservation is proposing to conduct annual mail surveys of the clients of five recreation and conservation assistance programs to assess client satisfaction with the services received and to identify needed program improvements. The NPS goal in conducting these surveys is to use the survey information to identify areas of strength and weakness in its recreation and conservation assistance programs, to provide an information base for improving those programs, and to provide a required performance measurement (Goal IIIb1 of the 1997 National Park Service Strategic Plan) under the Government Performance and Results Act.

NPS' National Center for Cultural Resources, Stewardship, and Partnerships is proposing to collect information on customer satisfaction with technical assistance publications (using response cards) and technical training, conferences, etc. through responses to training evaluation questions. The National Center for Cultural Resources, Stewardship, and Partnerships also is proposing to collect information on the number of historic properties officially designated and/or protected at the State and local governmental level respectively. The historic property information will be collected from State Historic Preservation Offices and Certified Local Governments (CLGs). CLGs are local governments that have an official historic preservation partnership agreement with their State and NPS pursuant to the National Historic Preservation Act, as amended. The NPS goal in collecting this information is to assist in the evaluation of NPS' historic preservation partnership program effectiveness in achieving the historic preservation results sought and specified in Goals IIIa1, IIIa2, and IIIa3 of the 1997 National Park Service Strategic Plan produced pursuant to the Government Performance and Results Act.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for all nine information collections. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Public comments will be accepted on or before August 21, 1998.

SEND COMMENTS TO: Diane M. Cooke, Information Collection Clearance Office, WASO Administrative Program Center, National Park Service, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION: Contact Rob Campellone—*Voice:* 202–565–1198, *Email:* <rob_campellone@nps.gov>—for further information regarding the surveys related to Recreation and Conservation Assistance customer satisfaction.

Contact Stephen Newman—*Voice:* 292–343–9577, *Email:* snewman@hps.cr.nps.gov_for further information regarding the questionnaires related to historic preservation technical assistance customer satisfaction.

Contact John Renaud—*Voice:* 202–343–1059, *Email:* jrenaud@hps.cr.nps.gov—for further information regarding the collection of data on the number of historic properties designated or protected at the State and local government level.

SUPPLEMENTARY INFORMATION:

Titles: National Park Service Partnership Programs' GPRA Information Collections; Recreation and Conservation Assistance Customer Satisfaction Survey, Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, Historic Properties Designated or Protected By State Government Partners, and Historic Properties Designated or Protected By Local Government Partners

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The Government Productivity and Results Act requires Federal agencies to prepare annual performance report documenting the

progress made toward achieving long-term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goals IIIa1, IIIa2, IIIa3, and IIIb1 of the National Park Service Strategic Plan of 1997. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data collection or recordkeeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion.

The National Park Service needs information to help evaluate and improve its recreation and conservation assistance programs and its historic preservation programs.

Automated data collection and statistical sampling: NPS is exploring means to supplement hard copy information with electronic submittal and/or sampling. Total automation would have the potential to skew the results because many potential respondents do not have the ability to respond electronically. NPS intends to test Internet and e-mail submittal for some of the information collections. The results of the initial rounds of these information collections will help to determine the suitability of automation, electronic submittal, and sampling in terms of quality control and in terms of confidence in making extrapolations from the responses available.

Description of respondents: The type of respondents will vary as follows depending upon the information collection.

For the Recreation and Conservation Assistance Customer Satisfaction Surveys, the potential respondents will be all principal contact persons of principal cooperating organizations and agencies which have received substantial assistance from any of the five participating programs during the prior Fiscal Year (October 1 through September 30).

For the Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, the potential respondents will be any recipient of a NPS historic preservation technical assistance publication (an estimated 30,000 distributed annually) and any person receiving NPS historic preservation technical assistance information in a course, workshop, conference, etc. (an estimated 5,000 participants annually).

For collecting information on the number of Historic Properties Designated or Protected By State Government Partners, the potential respondents will be 56 State Historic Preservation Offices. There is one State Historic Preservation Office for each State, Territory, etc. defined as a State by the National Historic Preservation Act, as amended.

For collecting information on the number of Historic Properties designated or Protected By Local Government Partners, the potential respondents will be the Certified Local Governments (CLGs). A CLG is a local government that has executed a formal agreement with its State Historic Preservation Office and NPS and thereby has committed itself to carry out the historic preservation responsibilities specified by the National Historic Preservation Act for participants in the CLG program. There will be an estimated 1,300 CLGs by the end of the approval period being sought for this information collection.

Estimated average number of respondents: 36,845. See the chart below for a breakdown by each information collection.

Estimated average number of responses: 9,974. See the chart below for a breakdown by each information collection.

Estimated average burden hours per response: 2.78 minutes. See the chart below for a breakdown by each information collection.

Frequency of Response: Various. For the Historic Preservation Technical Assistance Customer Satisfaction Questionnaires, the frequency of response is one time per publication or technical assistance event. For the other seven proposed information collections the frequency of response is one time per respondent per year.

Estimated annual reporting burden: 464 hours. See the chart below for a breakdown by each information collection.

Information collection	Estimated number of:			Total hours
	Respondents	Responses	Average time per response (in minutes)	
Rivers, Trails and Conservation Assistance Program	250	250	10	42
Federal Lands to Parks Program	100	100	10	17
Long Distance Trails Program	125	125	10	21
Heritage Areas Program	10	10	10	2
Wild and Scenic Rivers Coordination Program	4	4	10	1
Subtotal	489	489	10	83
Historic Preservation Technical Assistance Publications Customer Satisfaction	30,000	4,500	2	150
Historic Preservation Technical Assistance Training (etc.) Customer Satisfaction	5,000	4,500	2	150
Historic Properties Designated or Protected by State Partners	56	56	10	9
Historic Properties Designated or Protected by CLG Partners	1,300	429	10	72
Subtotal	36,356	9,485	2.41	381
Grand Total	36,845	9,974	2.78	464

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–16495 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park; Advisory Commission Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoa Pili o Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 10:00 a.m. to 2:00 p.m., July 18, 1998, Hawaii Community College, Manono Campus, 200 West Kawili Street, Bldg. 379–A, Room #6, Hilo, Hawaii.

Topic of discussion will be committee reports.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 15, 1998. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: June 8, 1998.

Bryan Harry,

Superintendent, Pacific Islands Support Office.

[FR Doc. 98–16494 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 13, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 7, 1998.

Beth Boland,

Acting Keeper of the National Register.

Arkansas

Craighead County

Craighead County Courthouse, 511 Main St., Jonesboro, 98000831

Desha County

Pindall, Xenophon Overton, Law Office, Jct. of Capitol and Kate Adams Sts., Arkansas City, 98000832

Ouachita County

Two Bayou Methodist Church and Cemetery, Ouachita Cty Rd. 125, Camden vicinity, 98000830

California

San Diego County

City of San Diego Police Headquarters, Jails and Courts, 801 W. Market St., San Diego, 98000833

Connecticut

Hartford County

High Street Historic District, 402–418 Asylum St., 28 High St., and 175–189 Allyn St., Hartford, 98000850

District of Columbia

District of Columbia State Equivalent

Lyndon Baines Johnson Memorial Grove on the Potomac, Lady Bird Johnson Park, Washington, 98000834

Florida

Hamilton County

Johns House, Jct. of FL 135 and Adams Memorial Dr., White Springs, 98000835

Louisiana

St. Bernard Parish

Friscoville Street Historic District, 100–900 blocks of Friscoville St., Arabi, 98000837

Old Arabi Historic District, Roughly along parts of Angela, Mehle, and Esteban Sts., Arabi, 98000836

Maryland

Calvert County

Lyons, Joseph D., House, 7120 Wayside Dr., Sunderland vicinity, 98000839

Massachusetts

Plymouth County

South Hingham Historic District, Roughly along Main St., from Cushing St. to Tower Brook Rd., Hingham, 98000838

Missouri

St. Louis County

Jefferson Barracks National Cemetery (Civil War Era National Cemeteries MPS), 2900 Sheridan Rd., Green Park vicinity, 98000840

South Dakota

Pennington County

Rapid City Commercial Historic District (Boundary Increase), Roughly along St. Joseph and Main Sts., from Mt. Rushmore and Fifth Sts., Rapid City, 98000841

Tennessee

Davidson County

Lyttle, Hulda Margaret, Hall of Meharry Medical College, 1005 Dr. D. B. Todd, Jr. Blvd., Nashville, 98000842

Texas

Bexar County

Maverick—Carter House, 119 Taylor St., San Antonio, 98000844

Our Lady of Mount Carmel and St. Therese Church, 906 Kentucky, San Antonio, 98000843

Virginia

Shenandoah County

Edinburg Historic District, Roughly along Stony Creek Blvd., Shenandoah and Railroad Aves., Edinburg, 98000845

Washington

Chelan County

Leavenworth National Fish Hatchery, 12790 Fish Hatchery Rd., Leavenworth vicinity, 98000847

Grays Harbor County

Lake Quinault Lodge, South Shore Rd., Lake Quinault, 98000846

Wisconsin

Rock County

Pomeroy and Pelton Tobacco Warehouse, 1 W. Fulton St., Edgerton, 98000848

Sheboygan County

Imig, Henry and Charles, Block, 625–629 N. Eighth St., Sheboygan, 98000849.

[FR Doc. 98–16512 Filed 6–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; baggage and personal effects of detained aliens.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agencies, estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects on Detained Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–43. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his/her property. The Immigration and Naturalization Service also uses this form to protect the government from possible fraudulent claims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 1 minute (.017) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 53–07, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time many also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Department of Clearance Officer, United States Department of Justice.

[FR Doc. 98–16432 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; *ABC* change of address form and special filing instructions for *ABC* class members.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information/Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection: ABC* Change of Address Form and Special Filing Instructions for *ABC* Class Members.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–855 and M–426. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is mandated by the *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) and will be used by class members to inform the Immigration and Naturalization Service of address changes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 I–855 responses at 30 minutes (.50) per response; and 250,000 M–426 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–16433 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application for stay of deportation or removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 21, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved Collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–246. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the Immigration and Naturalization Service to determine the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minute (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 16, 1998.

Robert B. Briggs,

Departmental Clearance Officer, United States Department of Justice.

[FR Doc. 98–16434 Filed 6–19–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,352]

Allied Signal, Inc., Automotive Safety Restraints Systems (a/k/a Breed Technologies, Inc.), Greenville, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 23, 1996, applicable to workers of Allied Signal, Inc., Automotive Safety Restraints Systems located in Greenville, Alabama. The notice was published in the **Federal Register** on June 20, 1996 (6 FR 31553).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that Breed Technologies, Inc. purchased the subject firm plant on October 31, 1997. Consequently, some of the workers separated from employment at the Greenville facility have had their wages reported under the unemployment insurance (UI) tax account for Breed Technologies, Inc. The workers of the subject firm produce seat belt and air bag assembly components for the automotive industry.

The intent of the Department's certification is to include all workers of the Greenville, Alabama plant adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect that Allied Signal, Inc., Automotive Safety Restraints Systems is under the new ownership of Breed Technologies, Inc.

The amended notice applicable to TA–W–32,352 is hereby issued as follows:

All workers of Allied Signal, Inc., Automotive Safety Restraint Systems, also known as Breed Technologies, Inc., Greenville, Alabama who became totally or partially separated from employment on or after April 22, 1995 through May 23, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of May 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16550 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–2–34,400]

Apocalypse Inc.; Ellenville, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, and investigation was initiated on April 6, 1998, in response to a worker petition which was filed on behalf of workers at Apocalypse Inc., Ellenville, New York.

The subject firm closed in March of 1997. The Department has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16557 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,591]

B.E.L.-Tronics Limited, a/k/a BELL-Tronics LLC, Covington, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 25, 1997, applicable to workers of B.E.L.-Tronics Limited located in Covington, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm engaged in employment related to the production of swingmates (circuit board assemblies). New information provided by the State shows that on January 1, 1998, the subject firm began operating under the name BEL-Tronics LLC. Consequently, some of the workers separated from employment at the Covington facility have had their wages reported under the unemployment insurance (US) tax account for BEL-Tronics LLC.

The intent of the Department's certification is to include all workers of the B.E.L.-Tronics Limited, Covington, Georgia plant adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect that B.E.L.-Tronics Limited is also known as BEL-Tronics LLC.

The amended notice applicable to TA–W–33,591 is hereby issued as follows:

All workers of B.E.L.-Tronics Limited, also known as BEL-Tronics LLC, Covington, Georgia engaged in employment related to the production of swingmates (circuit board assemblies) who became totally or partially separated from employment on or after June 10, 1996 through July 25, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16548 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,296]

Doehler-Jarvis, Toledo, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 5, 1998, the United Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Local 1058, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice applicable to workers of the subject firm located in Toledo, Ohio, was signed on April 8, 1998 and published in the **Federal Register** on May 6, 1998 (63 FR 25081).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of Doehler-Jarvis, Toledo, Ohio, producing transmission cases was denied based on the finding that the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. None of the Doehler-Jarvis customers reported increased import purchases while decreasing purchases of transmission cases from the Toledo plant.

In support of their application for reconsideration, the UAW Local 1058 submitted documents concerning a foreign company that will supply transmission cases to one of the major Doehler-Jarvis customers. A follow-up with this customer confirms that there were no imports of transmission cases during the time period relevant to the petition investigation. The customer reported that once Doehler-Jarvis made the announcement to close the Toledo production facility, they were required to pursue other suppliers of transmission cases.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16547 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,386]

E.I. du Pont de Nemours & Company, Incorporated, Martinsville, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 12, 1998, applicable to all workers of E.I. du Pont de Nemours & Company, Incorporated, located in Martinsville, Virginia. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce nylon yarn. New information provided by the company shows that some workers of E.I. du Pont de Nemours & Company, Incorporated were leased from Belcan Corporation and Cad Plus Technical Services, both of Martinsville, Virginia. The leased workers provided computer and

information systems support services to the Martinsville, Virginia location of E.I. du Pont de Nemours & Company. Worker separations occurred at Balcan Corporation and Cad Plus Technical Services as a result of worker separations of E.I. du Pont de Nemours & Company. Accordingly, the Department is amending the workers certification to include the workers of Belcan Corporation and Cad Plus Technical Services, Martinsville, Virginia.

The intent of the Department's certification is to include all workers of E.I. du Pont de Nemours & Company, Incorporated adversely affected by imports of nylon yarn.

The amended notice applicable to TA–W–34,386 is hereby issued as follows:

All workers of E.I. du Pont de Nemours & Company, Incorporated, located in Martinsville, Virginia and leased workers of Belcan Corporation and Cad Plus Technical Services, located in Martinsville, Virginia that provided computer and information systems support services for the production of nylon yarn produced at E.I. du Pont de Nemours & Company, Incorporated, Martinsville, Virginia who became totally or partially separated from employment on or after March 10, 1997 through May 12, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of June 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16558 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 202010.

Signed at Washington, D.C. this 1st day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 06/01/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,594	Goodyear Tire and Rubber (Wrks)	Cartersville, GA	03/31/98	Tire Cord Fabrics.
34,595	Carthage Machine Co (IAMAW)	Birmingham, AL	05/13/98	Wood Chippers.
34,596	Koehler Manufacturing Co (Comp)	Marlboro, MA	05/18/98	Portable Lighting and Charging Equipment.
34,597	Price Pfister (Wrks)	Pacoima, CA	05/18/98	Faucets, Plumbing Parts.
34,598	J. Fashions International (UNITE)	Jessup, PA	05/18/98	Dresses.
34,599	J K Operating Corp (UNITE)	Mahanoy City, PA	05/18/98	Sleepwear.
34,600	Kowa Printing Corp (GCIU)	Danville, IL	05/17/98	Print Insurance Forms, Manuals, etc.
34,601	Sanibel Co and ARTO (Wrks)	Hialeah, FL	05/10/98	Ladies' Sportswear.
34,602	Willamette Industries (WCIU)	Eugene, OR	05/17/98	Lumber.
34,603	Oxford of Wadley (Comp)	Wadley, GA	05/07/98	Men's Dress Shirts.
34,604	Master Lock Door Co (Comp)	Auburn, AL	05/21/98	Builders Hardware.
34,605	G.F. Wright Steel & Wire (Wrks)	Worcester, MA	05/18/98	Woven Handware Clothes.
34,606	UNITE, Mid-Atlantic Reg. (UNITE)	Bristol, VA	05/15/98	Union Office.
34,607	Berg Electronics (IBEW)	Franklin, IN	05/20/98	BNC and Coxial Communication Connectors.
34,608	Corbro Mfg Co. LP (Wrks)	West Warwick, RI	05/20/98	Raschel Lace.
34,609	Allied Signal, Inc (Comp)	Columbia, SC	05/26/98	Nylon.
34,610	Saint Gobain Corp (Wrks)	Keasbey, NJ	05/15/98	Ceramic Refractories.
34,611	Inter-State Dyeing (Comp)	Passaic, NJ	04/03/98	Finished Fabric.
34,612	Wex TEx Ind., Inc (Comp)	Ashford, AL	05/19/98	Pajamas, Sleepwear and Boxer Shorts.
34,613	Hovland Mfg. Co., Inc (Comp)	Cody, WY	05/18/98	Ladies' Large and Tall Sizes.
34,614	Champion International (Wrks)	Hamilton, OH	05/15/98	Uncoated Freesheet Paper.

[FR Doc. 98–16552 Filed 6–19–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 05/26/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,568	MPM Automotive Prod. (Comp)	Tucson, AZ	05/12/98	Automotive Products.
34,569	Georgia Apparel, Inc (UNITE)	New York, NY	05/12/98	Pants, Skirts, Shorts.
34,570	Buena Vista Manufacturing (Wrks)	Buena Vista, VA	05/11/98	T-Shirt and Fleece Sweatshirts.
34,571	California Microwave (Wrks)	Stafford, TX	04/28/98	Wireless Communications.
34,572	Joe Sharp Manufacturing (Wrks)	Ranch Cucamonga, CA.	05/05/98	Cutting and Sewing of Soft Luggage.
34,573	Code Alarm (Wrks)	Georgetown, TX	05/12/98	Wire Harnesses.
34,574	Valorie's Folk Art (Wrks)	Springdale, AR	05/11/98	Sweat Shirts and T-Shirts.
34,575	Kleinert's Inc (Comp)	Largo, FL	05/14/98	Infants and Toddler Playwear.
34,576	OPS, Inc (Wrks)	Great Bend, KS	05/12/98	Oilwell Services.
34,577	Wausau-Mosinee Paper Corp (Wrks)	Rhinelander, WI	05/13/98	Specialty Papers.
34,578	Quorum Lanier, Inc (Wrks)	Bloomington, MO	05/11/98	Data Base.
34,579	Zenith Electronicsw Corp (Wrks)	Melrose Park, IL	05/11/98	T.V. Tubes and Computer Monitors.
34,580	Siebe Appliance Controls (Comp)	New Stanton, PA	05/07/98	Cooking Appliances Controls.
34,581	Champion International (Corp)	Machias, ME	05/06/98	Lumber.
34,582	Phillips-Van Heusen (Comp)	Opelika, AL	04/28/98	Magnetic Tape for Audio, Video.
34,583	Quantegy, Inc (Comp)	Opelika, AL	04/28/98	Magnetic Tape for Audio, Video.
34,584	Quantegy, Inc (Comp)	Peachtree City, GA	04/28/98	Magnetic Tape for Audio, Video.
34,585	Robertshaw Controls Co (Comp)	Long Beach, CA	05/08/98	Gas Heating Control Valves.
34,586	Star Food Processing, Inc (Comp)	San Antonio, TX	05/06/98	Cattle and Tomatoes.
34,587	Stella Foods, Inc. (Wrks)	Green Bay, WI	05/14/98	Cheese: Mozzarella, Provolone, Romano.
34,588	Tri-Clover, Inc (IAMAW)	Kenosha, WI	05/14/98	Tubular Fittings.
34,589	Beardsley and Piper (Wrks)	Chicago, IL	04/03/98	Foundary Equipment.
34,590	Eagle Precision Tech. (Comp)	Jackson, MI	04/24/98	Tube End Forming Machines.
34,591	Americold Logistics (Wrks)	Nampa, ID	05/12/98	Potatoes and Vegetables.
34,592	Paper Magic Group, Inc (Comp)	Scranton, PA	04/23/98	Collectible Figures.
34,593	Int'l Transportation (Wrks)	Bowling Green, KY	05/15/98	Underwear—T-Shirts.

[FR Doc. 98–16553 Filed 6–19–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Quantum Opportunity Program Demonstration Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed new collection of information for the Quantum Opportunity Program (QOP) Demonstration Evaluation.

A copy of the proposed information collection request (ICR) can be obtained

by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 21, 1998. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed data collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Eileen Pederson, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202–219–5782, extension 145 (this is not a toll-free number). Internet address: PedersonE@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1995, under authority of Title IV of the Job Training Partnership Act (JTPA), ETA—in partnership with The Ford Foundation—launched the QOP demonstration in seven sites: Memphis, Tennessee; Cleveland, Ohio; Washington, D.C.; Fort Worth, Texas; Houston, Texas; Philadelphia, Pennsylvania; and Yakima, Washington. Simultaneously, the Department of Labor selected Mathematica Policy Research, Inc. to determine the net impact of the program. This data collection covers outcome variables for determining the program's impact on the student participants.

QOP provides mentoring, computer-assisted instruction, course-based tutoring, lifeskills training, and community service activities for at-risk disadvantaged high school students. A youth was eligible for QOP if he or she attended a high school with a four-year dropout rate equal to or greater than 40 percent, was entering the 9th grade for the first time in the 1995–96 academic year (the Washington, D.C. site began operations a year later: in the 1996–1997 academic year), and was in the lower two-thirds of the grade distribution for entering 9th graders according to the grade point averages from the 8th grade. The evaluation will measure QOP's impact on academic achievement in reading and mathematics, high school graduation, and enrollment in postsecondary education or training programs. The demonstration will also be evaluated based on its impact on behaviors that are associated with barriers to achieving economic self-sufficiency as adults. Such behaviors include substance abuse, teen parenting, and criminal activity.

II. Current Actions

This notice concerns the collection of data by means of a questionnaire covering outcomes and behaviors, and the collection of school records for each member of the research sample.

Type of Review: New.

Agency: Employment and Training Administration, U.S. Department of Labor.

Title: Quantum Opportunity Program (QOP) Demonstration Evaluation.

OMB Number: 1205–New.

Affected Public: Individuals.

Cite/Reference/Form: The QOP promotion protocol, in-person questionnaire, telephone questionnaire, and school record collection protocol.

Total Respondents: 1,069 youth and 175 school administrators.

Frequency: The protocols and questionnaires will be administered as shown in the following table:

Item	Washington, D.C.	Other sites
Promotion Protocol	Fall 1998, 1999	Fall 1998.
In-Person Questionnaire	Spring 2000	Spring 1999.
School Record Protocol	Fall 2000	Fall 1999, 2000.
Telephone Questionnaire	Fall 2000, 2001	Fall 1999, 2000, 2001.

Estimated Average Time per Respondent: Collection of school records (including promotion records) is estimated to require five minutes per student. The in-person questionnaire is estimated to require 30 minutes to complete, the telephone questionnaire is estimated to take 20 minutes to complete.

Estimated Total Burden Hours:

Item	Respondents	Frequency of administration	Response rate (percent)	Total responses	Minutes per response	Burden hours
Promotion Protocol	175	1.2	100	175	30	105
In-Person Questionnaire	1069	1	80	855	30	428
School Record Protocol	175	1.5	90	236	30	118
Telephone Questionnaire	1069	2.86	80	2446	20	815
Total	1244					1466

Total Burden Cost: The cost of collecting promotion and school records, based on an average school staff salary of $20, is anticipated to be $4,460. The cost to student participants to complete the questionnaire in person and by telephone, based on the minimum wage of $5.15, is approximately $6,401. Thus, the total burden cost is expected to be $10,861.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 16, 1998.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 98–16556 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01702]

B.E.L.-Tronics Limited a/k/a BEL Tronics LLC, Covington, GA; Amendment Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on July 25, 1997, applicable to workers of B.E.L.-Tronics Limited located in Covington, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm engaged in employment related to the production of swingmates (circuit board assemblies). New information provided by the State shows that on January 1, 1998, the subject firm began operating under the name BEL-Tronics LLC. Consequently, some of the workers separated from employment at the Covington facility have had their wages reported under the unemployment insurance (UI) tax account for BEL-Tronics LLC.

The intent of the Department's certification is to include all workers of the B.E.L.-Tronics Limited, Covington, Georgia plant adversely affected by increased imports from Canada or Mexico. Accordingly, the Department is amending the certification to reflect that B.E.L.-Tronics Limited is also known as BEL-Tronics LLC.

The amended notice applicable to NAFTA–01702 is hereby issued as follows:

All workers of B.E.L.-Tronics Limited, also known as BEL-Tronics LLC, Covington, Georgia, who became totally or partially separated from employment on or after June 10, 1996 through July 25, 1999, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16559 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,188 and NAFTA–02140]

Badger Paper Mills, Incorporated, Peshtigo, WI; Notice of Revised Determination on Reconsideration

On March 2, 1998, the Department issued Negative Determinations Regarding Eligibility to apply for TAA and NAFTA–TAA, applicable to workers and former workers of Badger Paper Mills, Incorporated located in Peshtigo, Wisconsin. The notices were published in the **Federal Register** on March 23, 1998 (63 FR 13878) and (63 FR 13879), respectively.

By letter of March 27, 1998, the petitioners requested administrative reconsideration regarding the Department's denial of TAA and NAFTA–TAA for workers of the subject firm. Workers at Badger Paper Mills, Incorporated are engaged in employment related to the production of commercial business paper and twisting papers for candies and gum. The petitioners claim that the investigations were lacking in substance in that the Department did not examine paper grade, pricing or competition. Price and marketing practices by domestic competitors would not form the basis for a worker group certification under the Trade Act of 1974, as amended.

One of the findings in the original TAA and NAFTA–TAA negative determinations for workers of Badger Paper Mills, Incorporated was that the subject firm exported a majority of their products, and thus, were not import impacted. The petitioners requesting reconsideration, however, presented evidence that some of the commercial paper customers decreasing purchases were domestic customers.

On reconsideration, the Department obtained additional information regarding the output at the Peshtigo plant and the major declining domestic customers. The primary output at Badger Paper Mills in 1996 and 1997 was commercial business paper.

On reconsideration, the Department conducted a survey of the domestic customers reducing purchases of commercial business paper from the subject firm. The customers reported continued or increasing reliance on import purchases of commercial business paper from Mexico or Canada.

Other findings on reconsideration show that the workers at the subject firm are interchangeable among the product lines. Accordingly, the Department recognizes that the worker separations resulting from increased imports of commercial business paper indirectly affected the workers producing of twisting papers for candies and gum. Workers at Badger Paper Mills, Incorporated that formerly produced pulp at the Peshtigo location are covered under TA–W–32,366 until the expiration date of June 17, 1998, and are therefore, excluded from this finding.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude there were increased imports from foreign sources, including Mexico or Canada, of articles like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Badger Paper Mills, Incorporated, Peshtigo, Wisconsin engaged in employment related to the production of commercial business paper and twisting papers for candies and gum who became totally or partially separated from employment on or after January 19, 1997 through two years from the issuance of this revised determination are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

All workers of Badger Paper Mills, Incorporated, Peshtigo, Wisconsin engaged in employment related to the production of commercial business paper and twisting papers for candies and gum who became totally or partially separated from employment on or after January 16, 1997 through two years from the issuance of this revised determination are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 3rd day of June 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16549 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,475; Ocean Beauty, Astoria, OR

TA–W–34,442; Sea Watch International, Ltd. Easton, MD

TA–W–34,218; Kane Handle Co., Kane, PA

TA–W–34,351; Clearing Niagara Bliss (CNB), International, Inc., New Products Div., Buffalo, NY

TA–W–34,311; Couvee Corp., Rancho Dominguez, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,494; UNDC-Wilson Sporting Goods Co., Algood, TN

TA–W–34,521; Rugby Laboratories, Glenview, IL

TA–W–34,528; Independent Order of Foresters, San Diego, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,447; OilTanking Houston, Inc., d/b/a Carter-Roag Coal Co., Elkins, WV

TA–W–34,379; Kezar Falls Woolen Co., Parsonsfield, ME

TA–W–34,361; Otis Elevator Co., Bloomington, IN

TA–W–34,434; North American Refractories Co., Curwensville Plant, Curwensville, PA

TA–W–34,363; Dana Corp., Marion Forge Div., Marion, OH

TA–W–34,228; Avery Dennison, Chicopee Binder Div., Chicopee, MA

TA–W–34,344; Lipton, Flemington, NJ

TA–W–34,415; Superior Design Co., Liverpool, NY, Employed at the Global Heavy Absorption Design Center, Carrier Corp., Syracuse, NY

TA–W–34,465; United Industries, Beloit, WI

TA–W–34,399; Kenecott Utah Copper Corp., Magna, UT

TA–W–34,457; Pre Con Corp., Kalamazoo, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,375; Pacificorp, Wyodak Plant, Gillette, WY

TA–W–34,467; Lone Star Cutting Services, Inc., El Paso, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–34,389; BHP Copper, Inc., Pinto Valley Operations, Miami, AZ

Aggregate imports of copper ore and concentrate did not increase during the period under investigation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,418; Cole Haan Manufacturing, Sanford, ME: March 26, 1997.

TA–W–34,433; Champion Products, Inc. "Screen Printing Department" and "Embroidery Department", Dunn, NC: March 24, 1997.

TA–W–34,398; Semitool, Inc., Kalispell, MT: March 14, 1997.

TA–W–34,410; Quantum Corp., Workstation and Systems Storage Group, Hard Disk Drive Prototype Manufacturing, Shrewsbury, MA: March 26, 1997.

TA–W–34,449; Midstate Garment Manufacturing, Inc., McMinnville, TN: March 31, 1997.

TA–W–34,356; The Sero Co., Inc., Cordele, GA: March 12, 1997.

TA–W–34,360; Conway Acquisition Corp., d/b/a/ Uniblend Spinners, Inc., Union, SC: March 10, 1997.

TA–W–34,414; Bensal Fashions, Inc., Briarcliff Manor, NY: March 16, 1997.

TA–W–34,452; Libby Sawmill, Louisiana-Pacific Corp., Northern Div., Libby, MT: June 5, 1997.

TA–W–34,426; Bay City Fashions, Bay City, MI: March 25, 1997.

TA–W–34,387; Bowcraft Trimming Co., Inc., Newark, NJ: March 13, 1997.

TA–W–34,485; Kaufman Footwear Corp., Dushore, PA

TA–W–34,460 & A; Westark Garment Manufacturing, Waldron, AR: and Havana, AR: March 25, 1997.

TA–W–34,391, A & B; Forstmann and Co., Dublin, GA, Milledgeville Plant, Milledgeville, GA and Louisville Plant, Louisville, GA: March 16, 1997.

TA–W–34,392; Voyager Emblem Co., Sanborn, NY: March 9, 1997.

TA–W–34,367; Stevcoknit Fabrics Co., A Div. Of Delta Mills, Inc., A Subsidiary of Delta Woodwide Industries, Inc., Carter and Holly Plant, Wallace, NC and Operating at The Following Locations: A; Michel Plant, Spartanburg, SC, B; Stevcoknit Administrative Offices, Greer, SC, C; New York Sales Office, New York, NY, D; California Sales Office, Torrance, CA, E; Texas Sales Office, Planos, TX, Sales Representative: F; Duluth, GA, G; Columbus, GA, H; Palm Beach Gardens, FL: March 17, 1997.

TA–W–34,233; Eastman Kodak Co., Rochester, NY, Kodak Park and Elmgrove, NY: January 20, 1997.

TA–W–34,346; Russell-Neuman, Inc., Cisco, TX: March 10, 1997.

TA–W–34,437; Golding City Hosiery Mills, Inc., Villa Rica, GA: March 30, 1997.

TA–W–34,366; Tiscarora, Inc., Martinsville, IN: March 11, 1997.

TA–W–34,565; Sinclair Technologies, Inc., Tonawanda, NY: April 30, 1997.

TA–W–34,377; Smoaks Manufacturing Co., Smoak, SC: March 17, 1997.

TA–W–34,386; E.I. du Pont de Nemours & Co., Inc., Martinsville, VA Including the Following leased Workers Employed at E.I. de Pont de Nemours & Co, CSI Services, Inc., Martinsville, VA, Macro Warehouse, Inc., Martinsville, VA, Greater Barrier Insulation, Martinsville, VA, Noland, Martinsville, VA and Fluor-Daniel, Martinsville, VA: March 10, 1997.

TA–W–34,473; Bugatti, Inc., New England Leather, Rochester, NH: March 31, 1997.

TA–W–34,499; Federal-Mogul Corp., Powertrain Systems Div., Mooresville, IN: April 17, 1997.

TA–W–34,502; Master Casual Wear, Ripley, TN: April 17, 1997.
TA–W–34,221; Pekin Plastics, Pekin, IN: January 23, 1997.
TA–W–34,394; Action West, Div. Of Don Shapiro Industries, El Paso, TX: March 16, 1997.
TA–W–34,353; Lane Plywood, Engene, OR: March 12, 1997.
TA–W–34,365; Smith of Galeton Gloves, Galeton, PA: March 19, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02327; Lone Star Cutting Services, Inc., El Paso, TX
NAFTA–TAA–02270, A & B; Forstmann & Co., Dublin, GA, Milledgeville Plant, Milledgeville, GA and Louisville Plant, Louisville, GA
NAFTA–TAA–02303; General Dynamics, Defense Systems, Pittsfield, MA
NAFTA–TAA–02260; The Sero Co., Inc., Cordele, GA
NAFTA–TAA–02280; Denise Lingerie, Div. of House of Ronnie, Inc., Johnson City, TN

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02375; Transcity Terminal Warehouse, Indiana, Distribution Warehouse, Indianapolis, IN
NAFTA–TAA–02330; Young and Morgan Trucking, Lyons, OR
NAFTA–TAA–02292; Caliber Logistics, Inc., Vancouver, WA
NAFTA–TAA–02367; Independent Order of Foresters, San Diego, CA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02333; The Proctor and Gamble Manufacturing Co., Health Care Div., Greenville, SC: April 15, 1997.
NAFTA–TAA–02313; Champion Products, Inc., "Screen Printing Department" and "Embroidery Department" Dunn, NC: March 31, 1997.
NAFTA–TAA–02355; Megas Beauty Care, Inc., Div. of American Safety Razor, Sparks, NE: March 31, 1997.
NAFTA–TAA–02326; Bugatti, Inc., New England Leater, Rochester, NH: March 31, 1997.
NAFTA–TAA–02362; Rotadyne, Engineered Roller Div., Lancaster, NY: April 27, 1997.
NAFTA–TAA–02363; Sheldahl. Inc., Aberdeen, SD: March 30, 1997.
NAFTA–TAA–02372; Sinclair Technologies, Inc., Tonawanda, NY: April 30, 1997.
NAFTA–TAA–02337; Kaufman Footwear Corp., Dushore, PA: April 15, 1997.
NAFTA–TAA–02357; J.C. Viramontes, Inc., d/b/a/ International Garment Finishers, Inc., El Paso, TX: April 29, 1997.
NAFTA–TAA–02339; Eagle Precision Technologies, Jackson Plant, Jackson, MI: April 1, 1997.
NAFTA–TAA–02380; Kimberly Clark Corp., Tecnol Products, Inc., Del Rio, TX: May 8, 1997.
NAFTA–TAA–02386; Jostens Photography, Inc., Webster, NY: May 11, 1997.
NAFTA–TAA–02416; Easton Corp., Commercial Controls Div., Salisbury, MD: May 11, 1997.
NAFTA–TAA–02370; Garland Commerical Industries, Inc., Div. of Welbilt Corp., Freeland, PA: May 5, 1997.

I hereby certify that the aforementioned determinations were issued during the month of June 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 11, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16560 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02329]

Penske Logistics, Incorporated, Bloomington, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Penske Logistics, Incorporated, Bloomington, Indiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA–02329; Penske Logistics, Incorporated, Bloomington, Indiana (June 11, 1998).

Signed at Washington, D.C. this 12th day of June, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–16551 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can by properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the collection of information included in the suspension of pension benefits regulation issued pursuant to the authority of section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) which governs the circumstances under which pension plans may suspend pension benefits payments to retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). The Department is particularly interested in comments which evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the basis for any suggested alternative burden estimates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 21, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department previously issued a regulation which described the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, i.e. 29 CFR 2530.203–3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because the requirement that retirees or participants be notified in the event of suspension of benefits is intended to protect their nonforfeitable right to their normal retirement benefits. By informing retirees or participants of the reasons for the suspension, the authority for the suspension, and the plan's procedure for review of a suspension of benefits, retirees or participants are informed of the status of their pension benefits and are able to raise with the plan facts or issues which may be relevant to determining whether a suspension of benefits is proper under the circumstances.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Suspension of Benefits Regulation pursuant to 29 CFR § 2530.203–3.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0048.

Affected Public: Indivduals of households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 57,374.

Total Responses: 57,374.

Frequency of Response: On occasion.

Total Annual Burden: 14,343.5 hours.

Comments submitted in response to this comment request will be summarize and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16554 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public

and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 21, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information of any or all of the Agencies. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company (mutual fund) when a fiduciary with respect to the plan (e.g., investment manager) is also the investment advisor for the investment company. In absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

II. Current Actions

The Office of Management and Budget's approval of this ICR will expire on September 30, 1998. This existing collection of information should be continued because without the relief provided by this exemption, an open-end mutual fund could not sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and establish new investment structures and policies, and amend their plan documents.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption two basic disclosure requirements. The first is intended to put the plan on notice of possible fees associated with the redemption of open-end mutual fund shares. It requires disclosure of any redemption fees in the current prospectus of the open-end mutual fund (the prospectus in effect at the time of the plan's acquisition or disposal of such shares). The second requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charged to or paid by the plan and the open-end mutual fund to the investment advisor.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

Type of Review: Extension of a currently approved collection.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 624.

Total Responses: 46,800.

Frequency of Response: On occasion.

Total Annual Burden: 4,212 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 17, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–16555 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Retirement Plan Leakage—Cashing In Your Future From ERISA Employer-Sponsored Pension Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, July 8, 1998, of the Retirement Plan Leakage—Cashing in Your Future—Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans. The group is studying pre-retirement distributions, including in-service distributions, hardship loans and participant loans from ERISA employer-sponsored pension plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, D.C. 20210, is for Working Group members to continue gathering statistical information and/or to take additional testimony on the import of these "pension preservation" issues.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may

be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 2, 1998, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, D.C. this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16562 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Small Businesses: How To Enhance and Encourage the Establishment of Pension Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, July 7, 1998, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying the obstacles to why small businesses are not establishing retirement vehicles for their employees when so many different savings arrangements are available. The Working Group also is focusing on how to encourage these businesses to establish such pension plans.

The session will take place in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 3:30 p.m., is for Working Group members to continue taking testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations, should contact Sharon Morrissey by July 2, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, D.C. this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16563 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Disclosure of the Quality of Care in Health Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group established by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what kind of information on the quality of care in health plans should be transmitted to fiduciaries and participants and how the information should be transmitted will hold an open public meeting on Tuesday, July 7, 1998, in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to continue taking testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before July 2, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 2, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 2.

Signed at Washington, DC, this 16th day of June, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–16564 Filed 6–19–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 22, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal

agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 14, 1998 (63 FR 18234–18235). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request for and Record of Pass.

OMB number: 3095–0026.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit organizations and institutions, and Federal Government.

Estimated number of respondents: 1,266.

Estimated time per response: 3 minutes.

Frequency of response: On occasion (when respondent wishes to enter NARA facilities). Respondents who are contractors are given a building pass which expires at the end of each fiscal year; those who are volunteers are given a pass valid for 5 years.

Estimated total annual burden hours: 64 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in National Archives and Records Administration (NARA) facilities and to facilitate the issuance of passes. Use of the form is authorized by 44 U.S.C. 2104. At the NARA College Park facility, individuals receive an access card with the pass that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The access card system is part of the security management system which meets the accreditation standards of the Government intelligence agencies for storage of classified information, and serves to comply with E.O. 12958.

Dated: June 17, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–16574 Filed 6–19–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 22, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on April 7, 1998 (63 FR 17035). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 334 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.42. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.42 and to schedule the date.

Dated: June 17, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–16575 Filed 6–19–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services: Grant Deadline Extended

SUMMARY: The Institute of Museum and Library Services (IMLS) announces the extension of the application deadline for the Basic Library Services Grants of the Native American Library Services grant program to Friday, July 31, 1998. This extension will ensure that all eligible tribes have an opportunity to apply for these non-competitive grants to support existing library operations. The deadline for two types of special-purpose grants in the Native American Library Services grant program, Technical Assistance Grants and Enhancement Grants, have not been extended. The Institute of Museum and Library Services is sending the guidelines to all 1997 grant applicants who have not submitted applications this year, as well as to others who have requested them.

ADDRESSES: For more information, or to be placed on the mailing list contact: The Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 606–5227; *imlsinfo@imls.fed.us*

(Catalogue of Federal Domestic Assistance No. 45.311)

Dated: June 15, 1998.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 98–16566 Filed 6–22–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators Meeting, Notice

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting.

Date and Time: July 16, 1998, 12:30 p.m.–5:00 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Office of Polar Programs, National Science Foundation, Arlington, VA 22230, Telephone: 703/306–1030; Fax: 703/306–0139.

Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (P.L. 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected sites, and other items designed to protect the Antarctic environment.

Agenda

- Introduction and Overview.
- Review of 1997–98 Visits to McMurdo, Palmer and South Pole Stations.
- Tour Operator's Comments on 1997–98 Season Visits.
- 1998–99 Visits to McMurdo, Palmer and South Pole Stations.
- Report from the International Association of Antarctic Tour Operators (IAATO).
- Information Dissemination.
- Yachting Activities in the Antarctic Peninsula.
- Update on Peninsula Site Inventory Project.
- Australian Approach to Tourism Management and Government Activities.
- Other Items.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 98–16464 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: July 22–23, 1998; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biotechnology Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1998 Inter-Agency Metabolic Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16528 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences: Committee of Visitors (1110).

Date and Time: July 22–24, 1998; 8:30 A.M. to 5:00 P.M. each day.

Place: National Science Foundation, Room 330, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Contact Person: Dr. Maryanna Henkart, Division Director for Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, (703) 306–1440.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Type of Meeting: Part open (see agenda below):

Agenda

Closed: July 22 (11:00 a.m.–5:00 p.m.); July 23 (8:30 a.m.–9:00 a.m., and 2:00 p.m.–5:00 p.m.); and July 24 (8:30 a.m.–12:00 a.m.)—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of programs in the Division of Molecular and Cellular Biosciences.

Open: July 22 (8:30 a.m.–11:00 a.m.); July 23 (9:00 a.m.–2:00 p.m.), and July 24 (1:00 p.m.–4:00 p.m.)—To assess the results of NSF program investments in the Molecular and Cellular Biosciences Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16523 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (173).

Date and Time: July 23–24, 1998, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Win Aung, Senior Staff Associate, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted under the Funding for Research Centers—Small Firms Collaborative R&D.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16526 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Engineering Education and Centers; Notice of Meetings

In accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: July 9–10 (Room 370); July 10, 1998, 8:00 a.m.–5:00 p.m. (Room 580).

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact: Dr. William Butcher, Senior Engineering Advisor, & Mr. Alex Schwarzkoph, Program Director, Division of Engineering and Education and Centers, Engineering Directorate, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, 703/306–1383.

Purpose of Meetings: To provide advice and recommendation concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Industry/University Cooperative Research Centers Program as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16529 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Human Resource Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: July 14–15, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Margrete S. Klein, Ph.D., Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1637.

Purpose of Meeting: To review proposals submitted to the Program for Women and Girls Implementation and Development Projects Over $100,00 Budget initiative.

Agenda: To review proposals for this program and make funding recommendations.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16524 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Integrative Activities (1373); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Integrative Activities.

Date and Time: July 20, 1998—8:30 a.m.–5:00 p.m.; July 21, 1998—8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Blvd., Arlington, Virginia.

Type of meeting: Closed.

Contact person: Dr. Nathaniel G. Pitts, Director, Office of Integrative Activities, Room 1270, 4201 Wilson Blvd, Arlington, Virginia 22230; Telephone: (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate full applications submitted to the Awards for the Integration of Research and Education (AIRE) program.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16522 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Physics Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and time: July 22–24, 1998 from 8:30 AM to 5:00 PM.

Place: National Superconducting Cyclotron Laboratory; Michigan State University; East Lansing, MI 48824–1321.

Type of meeting: Closed.

Contact person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of meeting: Technical review of Coupled Cyclotron Project at the National Superconducting Cyclotron Laboratory of Michigan State University.

Agenda: Presentation and evaluation of progress report pertaining to Coupled Cyclotron Project.

Reason for closing: The information being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 16, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16525 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Research, Evaluation and Communication (#1210).

Date and Time: July 8–9, 1998 and 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 830 and 880, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bernice T. Anderson, Program Director, Research, Evaluation and Communication, Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to Evaluation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16527 Filed 6–19–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant); Revocation of Exemption

I

The Rochester Gas and Electric Corporation (the licensee) is the holder of Facility Operating License No. DPR–18, which authorizes operation of the R. E. Ginna Nuclear Power Plant. The license provides 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 a pressurized-water reactor at the licensee's site located in Wayne County, New York.

II

On March 21, 1985, the NRC issued 11 exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50. The first exemption, relevant here, related to the Refueling Water Storage Tank (RWST). The licensee was granted an exemption from the technical requirements of Section III.G.2 in connection with the absence of a required continuous fire-rated barrier between redundant shutdown systems in the Auxiliary Building Fire Areas ABBM and ABI. The RWST extends through the concrete floor/ceiling at elevation 271 feet, which provides the common boundary between Fire Area ABBM and ABI. An 8-foot concrete block wall partially circles the circumference of the RWST on the upper side of the barrier. At the time the exemption was granted, there was a 6-inch gap around the circumference of the RWST.

III

By letter dated January 13, 1998, the licensee informed the NRC that the exemption is no longer required. The licensee indicated that the subject barrier has now been sealed by insertion of a 12 inch minimum depth of kaowool into the 6-inch gap around the circumference of the tank and closure of the gap by a ¾-inch thick steel plate.

On the basis of the licensee's submittal, the Commission hereby revokes the exemption granted on March 21, 1985, from the technical requirements of Section III.G of Appendix R to 10 CFR Part 50 with respect to the absence of a continuous fire-rated barrier at the common boundary between Fire Areas ABBM and ABI. The NRC staff did not review the modification that the licensee implemented to eliminate the need for the original exemption. The NRC staff may review the modification and its supporting technical bases during a future on-site inspection.

Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of the exemption will have no significant impact on the quality of the human environment (63 FR 31534).

This revocation of exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of June 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. 98–16538 Filed 6–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Texas License L03835]

ProTechnics International, Inc.—Houston, TX: Field Flood Tracer Study; Finding of No Significant Impact and Notice of Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering authorizing ProTechnics International, Inc. (ProTechnics) to conduct a field flood tracer study in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma near Stillwater, Oklahoma.

Environmental Assessment

Identificiation of the Proposed Action

The proposed action is authorizing ProTechnics to conduct a field flood tracer study using hydrogen-3 in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma, near the town of Stillwater, Oklahoma. ProTechnics, with offices in Houston, Texas, is authorized by the State of Texas License L03835, to conduct field flood tracer activities in oil and gas reservoirs at temporary jobsites within that State. NRC's regulations in 10 CFR 150.20, "Reciprocity—Recognition of Agreement State Licenses," states, in part, "* * * any person holding a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity * * * is granted a general license to conduct the same activity in * * * Non-Agreement States * * * [provided] the specific Agreement State license [does not] limit the authorized activity to a specific installation or location." Because the Texas license authorizes ProTechnics to use the requested radioisotopes in field flood tracer studies at temporary jobsites, ProTechnics qualifies for the general license. Paragraph (b)(1) of 10 CFR Part 150.20 further states, "* * *[any person] shall * * * before engaging in each activity * * * file an NRC Form-241, "Report of Proposed Activities in Non-Agreement States" * * * "with NRC. ProTechnics met this requirement with a submission dated April 22, 1998.

On January 13, 1997 (62 FR 1662), NRC published a final rule in the **Federal Register** amending 10 CFR 150.20. The amendment, primarily intended to clarify requirements concerning activities conducted at areas of exclusive federal jurisdiction with Agreement States, also revised 10 CFR 150.20(b) to make clear that licensees operating pursuant to the rule must comply with all NRC regulations applicable to materials licensees. 10 CFR Part 51 specifies the environmental protection regulations applicable to NRC's licensing activities and implements section 102(2) of the National Environmental Policy Act of 1969, as amended. Section 51.21 provides that all licensing actions require an environmental assessment except those identified in 10 CFR 51.20 as requiring an environmental impact statement or those identified in 10 CFR 51.22(c) as categorical exclusions. The sue of radioactive tracers in field flood studies is not identified in either section. Therefore, an environmental assessment must be prepared. Paragraph 51.60(b)(1)(vi) requires that an applicant

submit an environmental report with any request for use of radioactive tracers in field flood studies. ProTechnics submitted an environmental report in a letter dated April 1, 1998.

The Need for the Proposed Action

The action is to determine if the licensee's request to perform activities under the general license should be approved or denied. Field flood tracer studies are conducted in conjunction with enhanced recovery of oil and natural gas, commonly referred to as enhanced oil recovery (EOR).

The oil from a producing well in a new reservoir initially flows because of the pressure exerted by water and gas in the reservoir. As oil production continues the reservoir pressure declines unless fluids are injected into the reservoir to maintain the pressure. The average recovery from primary production, with and without pressure maintenance, is 20 to 30 percent of the original oil in place. Oil production can be increased through a secondary recovery technique called waterflooding, which is the injection of water through injection wells to push the oil toward production wells. Further enhancements in oil production may occur with the use of so-called tertiary recovery methods in which steam, sulfactants (soaps), or other compounds or gases are injected into the reservoir.

Radioactive tracers are used to define the movement of liquids or gases injected into an oil and gas reservoir to enhance recovery and to monitor reservoir performance. The water-soluble or gaseous tracer is introduced into a reservoir with the injected fluid. Both radioactive and nonradioactive tracers may be used. The tracer is placed in the injection well, where it is diluted and swept into the reservoir by injection liquid or gas. The diluted tracer is subsequently recovered at production wells and is monitored by sampling the recovered fluids.

In evaluating reservoir performance, it is desirable to determine the source of the injected fluid being collected at a production well. It is frequently desirable, therefore, to employ several tracers, using a different tracer in each of a number of injection wells.

Environmental Impacts of the Proposed Action

NRC published NUREG/CR–3467, "Environmental Assessment of the Use of Radionuclides as Tracers in the Enhanced Recovery of Oil and Gas" In November 1983. This generic environmental assessment (EA) evaluated the use of 16 different radioisotopes, used in certain activity ranges, as interwell tracers in field flooding for EOR operations. A typical operation using radioisotopes for interwell tracing was analyzed from the standpoint of three stages of operation: aboveground, subsurface, and recovery and disposal. Doses to workers who handle radioactive tracers and to members of the public were estimated for normal and accidental exposure scenarios. For the isotope ProTechnics requested authorization to use. NUREG/CR–3467 analyzed the use of up to 30 curies of hydrogen-3. The ProTechnics submittal only requests authorization to use up to 2 curies of hydrogen-3, well within the bounds of the generic assessment. The NUREG estimated the national radiological impact on the use of radioisotopes as interwell tracers in EOR projects to be a collective dose equivalent of less than 16 man-rem/yr. Accidental exposures were estimated to contribute little to the total. The ProTechnics proposal, which only includes one radioisotope and only a small percentage of the total activity evaluated in the NUREG for that radioisotope, will result in a lower collective dose equivalent.

Alternatives

Denial of ProTechnics request is a possible alternative to the proposed action. This would avoid any of the environmental impacts associated with the use of radioactive tracers. However, the proposed action is nevertheless reasonable because its environmental impacts are so small and it will provide benefits such as assisting to meet U.S. energy needs.

Agencies and Persons Consulted

Ms. Pam Bishop of the State of Oklahoma, Department of Environmental Quality (DEQ), was contacted on June 2, 1998, to discuss ProTechnics field flood tracer study reciprocity request and its potential environmental impacts. In a letter dated June 8, 1998, Ms. Bishop indicated that the DEQ had no objections to the tracer study.

Conclusion

The NRC staff concludes that the environmental impacts associated with ProTechnics proposed request to conduct a field flood tracer study using hydrogen-3 in an oil reservoir located at the Green Valley Unit, Noble County, Oklahoma, are expected to be significant.

Finding of No Significant Impact

The Commission previously prepared an EA related to the use of certain quantities of radionuclides as tracers in field flood operations for the enhanced recovery of oil and gas. On the basis of the assessment, the Commission concluded that environmental impacts that would be created by such actions would not be significant and do not warrant the preparation of an Environmental Impact Statement. Because ProTechnics' request is within the bounds of that EA, it has been determined that a Finding of No Significant Impact is appropriate.

The generic EA is made available as NUREG/CR–3467. Copies of NUREG/CR–3467 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy and ProTechnics' submittal are also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Opportunity for a Hearing

Any person whose interest may be affected by the approval of this action may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (ProTechnics International, Inc., 1160 Dairy Ashford, Suite 444, Houston, TX 77079); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, "Information Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the request must address in detail, are:

1. The interest of the rquestor in the proceeding;
2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe

the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 16th day of June, 1998.

For the Nuclear Regulatory Commission.

Stevens L. Baggett,

Acting Chief, Materials Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–16537 Filed 6–19–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station, Units 2 and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Mr. Stephen Dwyer dated April 25, 1997, for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3.

The Petition requests that the Commission shut down the San Onofre Nuclear Generating Station pending a retrofitting of the steam generators. As a basis for the request, the Petitioner asserts that the ability of the steam generators to withstand a major seismic event is seriously compromised by the degraded eggcrate supports discovered in the SONGS Unit 3 steam generators.

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–06), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555–0001, and at the Local Public Document Room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 11th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By e-mail dated April 25, 1997, Stephen Dwyer (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS) regarding his concerns about the ability of the SONGS steam generators to withstand a major seismic event.[1] Specifically, the Petitioner stated that the ability of the SONGS steam generators to withstand a major seismic event is seriously compromised by the degradation observed in the SONGS Unit 3 steam generator internal tube supports (eggcrate supports) during its 1997 refueling outage. The Petitioner requested an investigation to determine if Unit 2 has experienced degradation similar to that found in Unit 3 and also stated that further seismic analysis should be performed for the SONGS steam generators and that a retrofitting upgrade of the steam generator supports could be accomplished at this time. On June 26, 1997, the NRC staff acknowledged receipt of the Petition as a request pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) and informed the Petitioner that there was insufficient evidence to conclude that immediate action was warranted. Notice of the receipt of the Petition indicating that a final decision with respect to the requested action would be forthcoming within a reasonable time was published in the **Federal Register** on July 3, 1997 (62 FR 36085).

My Decision in this matter follows.

[1] The Petitioner sought to add this concern to his Petition dated September 22, 1996, wherein he requested the NRC to shut down the SONGS facility "as soon as possible" pending a complete review of the seismic design of the SONGS units based on information gathered from the Landers and Northridge earthquakes. By letter dated June 26, 1997, the NRC advised the Petitioner that his e-mail request dated April 25, 1997, concerning the ability of the SONGS steam generators to withstand a major seismic event, would be treated as a separate 10 CFR 2.206 Petition. The Director's Decision (DD–97–23) issued by the NRC on September 19, 1997, denied the Petitioner's September 22, 1996, request to shut down the SONGS units, providing a detailed discussion of the adequacy of the seismic licensing basis for the SONGS facility.

II. Discussion

A. Request for an Investigation to Determine if SONGS Unit 2 Has Experienced Eggcrate Degradation Similar to Unit 3

1. Background

The SONGS units utilize Combustion Engineering Model 3410 recirculating steam generators. This model of steam generator contains 9,350 Inconel 600 (ASME Material Specification SB–163) U-tubes with a nominal diameter and wall thickness of 0.75 and 0.048 inch, respectively. Secondary side tube support structures consist of seven horizontal full eggcrate supports, three horizontal partial eggcrate supports, and upper bundle supports (i.e., two batwing diagonal supports and seven vertical supports). The materials used for fabrication of the steam generator vessels and internals (including tube supports) are low-alloy and carbon steels, respectively. Figure 1 is a simplified cross-sectional diagram of the SONGS steam generators that clearly displays the 10 eggcrate support levels, and Figure 2 is a three-dimensional representation of the steam generators that gives additional structural detail.

The eggcrate supports consist of 1- and 2-inch carbon steel strips interlocked perpendicular to each other as shown in Figure 3. The eggcrate supports limit lateral motion of the tubes and, at the same time, allow free flow of fluid around the tubes.

During the 1997 refueling outage for SONGS Unit 3, the licensee discovered that portions of the eggcrate supports had experienced degradation, ranging from minor wastage of the eggcrate material to severe thinning in localized areas. The significant degradation observed during this refueling outage was confined mainly to the periphery locations of the eggcrate supports. The secondary sides of the steam generators in both units were inspected during their 1997 refueling outages and during their 1998 mid-cycle outages and, as discussed below, significant degradation was limited to the periphery locations of the SONGS Unit 3 eggcrate supports.

The licensee has extensively researched the cause of the eggcrate degradation and has concluded that the degradation was caused by a form of flow accelerated corrosion (FAC), a general term describing processes that use assistance from fluid flow to remove the protective oxide layer from base material. Removal of the protective oxide layer exposes the base material to the fluid environment, allowing further material removal through corrision and/or erosion processes. The carbon steel

eggcrate material utilized in the SONGS steam generators can be susceptible to FAC in the presence of sufficiently high fluid velocities.

The licensee concluded that the FAC occurred during recent operation of Unit 3 primarily as a result of steam generator secondary side increased fluid velocities caused by the buildup of deposits on the steam generator tubes. This buildup of deposits on the tubes significantly reduced the available flow area within the tube bundle causing flow diversion to the periphery of the tube bundle. The flow diversion to the periphery was also affected by the increased steam quality of the fluid within the tube bundle. The buildup of deposits on the tubes changed the heat transfer characteristics of the tubes causing the steam quality to increase in the central region of the steam generators. This resulted in an increase of the flow resistance in the central portions of the steam generator, forcing more flow to the peripheral regions, with resulting higher velocities. The resulting large velocity gradients at the periphery initiated vortices which further elevated local velocities that were capable of dislodging the protective oxide layer of the eggcrate material and initiating erosive FAC.

The chemical cleaning of the SONGS Units 2 and 3 steam generators during the 1997 refueling outages removed the deposit buildup and restored fluid flow to their original design values (i.e., nominal conditions). The licensee stated in its October 17, 1997, letter that with the flow area restored to nominal conditions, the high fluid velocities that lead to FAC would no longer exist, thus stabilizing eggcrate support degradation. The licensee has also made changes to the chemistry control program for the secondary system at SONGS Units 2 and 3 to reduce the feedwater iron transport. This is expected to prevent the level of deposit buildup observed in the steam generators before chemical cleaning was done in 1997. The staff concurs with the licensee's evaluation that FAC was caused by deposit buildup on the steam generator tubes and that removal of the deposits should restore the steam generator secondary fluid flow to within nominal design values, thereby eliminating continued significant eggcrate degradation. To confirm that FAC has been stopped by the chemical cleaning of the steam generators, and to assure that no significant degradation of the eggcrate support structure goes undetected, the licensee has committed to conduct periodic inspections of the secondary side of the steam generators in both units during future outages. The licensee will conduct periodic inspections of the secondary side of the steam generators to check the level of deposit buildup on the tubes and to verify that future degradation of the eggcrate, if any, remains within the assumptions used in the analysis to demonstrate continued operability of the steam generators (discussed later in this Decision).

2. Description of the Eggcrate Inspections

The SONGS licensee inspected the steam generator secondary side support structures, which include the eggcrate supports, in both SONGS units during their 1997 refueling outages and during their 1998 mid-cycle outages. The results of these inspections are contained in the licensee's letters dated May 16, 1997, and June 5, 1997 (SONGS Unit 2 and Unit 3 refueling outage inspections results, respectively), and letters dated March 10, 1998, and April 15, 1998 (SONGS Unit 2 and Unit 3 1998 mid-cycle outages, respectively).

The objective of the inspections for both units was to provide video documentation of all areas in which indications of support bar degradation was suspected and to verify that other areas did not exhibit these same characteristics. The extent and results of these video inspections are summarized below.

The inspection of the secondary side of each steam generator was divided into six areas: (1) general inspection, (2) inner tube bundle, (3) batwings and vertical straps, (4) eggcrate periphery, (5) eggcrate interior (blowdown lane),and (6) stay cylinder. Each of these areas was inspected to the extent necessary to understand, with a high degree of confidence, the amount of degradation present. The majority of these areas did not exhibit any significant degradation and therefore the design function of the support structures was not adversely impacted.

The general inspections were performed in the steam generators from the top of the moisture separator can deck and included the general area, U-bend, and annulus regions. The areas inspected included I-beams, I-beam to shroud attachments, drains, vertical supports, batwings and the batwing hoop, and baffle anti-rotational keys. These inspections identified no significant degradation in either unit in these areas.

The inner tube bundle consists of that area between the outer or peripheral tubes to the inner tubes of the stay cylinder. The inner bundle inspections were performed in both steam generators from the can deck. A small camera was dropped down in between the tubes in a number of different locations to assess the general material condition of the eggcrates away from the periphery area. For the steam generators in both units, the inspections indicated that the inner bundle did not exhibit the degraded characteristics of the periphery eggcrates found in the Unit 3 steam generators during the 1997 refueling outage.

No indications of thinning were detected during the inspections of the interior batwing and vertical strips on either unit.

Comprehensive peripheral eggcrate inspections were performed in both steam generators in the two units from the can deck. This included the lattice bars and tube to lattice bar interfaces at each eggcrate. The area near the periphery of the eggcrate supports in the Unit 3 steam generators experienced the maximum thinning, as shown in Figure 3 and discussed above. As stated earlier, minor isolated instances of thinning were observed in the peripheral eggcrate locations in the SONGS Unit 2 steam generators, but overall the thinning was considerably less than that observed on SONGS Unit 3.

Inspections of the blowdown lane eggcrates were performed in the steam generators through the 6-inch handhole at the secondary face of the tubesheet from the handhole to the stay cylinder. This included the lattice bars and the eggcrate rings. The inspection scope was to sample the eggcrate area nearest the tubes on both the hot- and cold-leg sides of the blowdown lane. Minor amounts of eggcrate degradation were found in the steam generators of both units, with the Unit 3 steam generators exhibiting the larger amount of degradation in this area.

For the inspection of the overall condition of the eggcrates and ring in the stay cylinder, a support plate inspection device was used. Little or no degradation was found in this area in either unit.

3. Summary of SONGS Unit 2 Eggcrate Inspection

The licensee's initial assessment of the Unit 2 stream generator eggcrate supports, conducted after the degradation issue was identified in the SONGS Unit 3 steam generators, was reported in its letter dated May 16, 1997. The licensee concluded that the Unit 2 eggcrate supports were in very good to excellent overall condition, based on the limited video examinations of the eggcrates performed in support of the chemical cleaning process. Although the licensee considered operation for the normal period of operation between refueling intervals to be acceptable on the basis of this limited examination,

the licensee conservatively performed a more extensive video examination of the eggcrates during a mid-cycle outage that began on January 24, 1998. As reported in its March 10, 1998, letter, the licensee observed minor isolated instances of thinning in the periphery areas of the eggcrate supports, but overall the thinning was considerably less than that observed on SONGS Unit 3.

The NRC reviewed the program established by the licensee to conduct the video examinations of the eggcrate supports during the SONGS Unit 2 mid-cycle outage and reported its findings in Inspection Report 50–361/98–10; 50–362/98–01, dated May 29, 1998. This program was similar to the licensee's program for inspecting the Unit 3 eggcrate supports during its mid-cycle outage. The primary difference between the inspection programs for the two units was that a larger portion of the Unit 3 eggcrate structures was inspected. The staff concluded in its inspection report that the scope of the SONGS Unit 2 secondary side visual inspections was satisfactory and the results supportive of the licensee's conclusion that no steam generator tubes needed to be removed from service due to insufficient support from any secondary side support structures, which includes the eggcrate support structures.

4. Actions Taken as a Result of Observed Eggcrate Degradation

Following the secondary side inspection activities conducted during the SONGS Unit 3 1997 refueling outage and 1998 mid-cycle outage, the licensee plugged and stabilized (by insertion of a steel cable inside the subject tube) some Unit 3 steam generator tubes as a precautionary measure due to the degradation observed in certain eggcrate supports. No tubes in the Unit 2 steam generators were removed from service. Once the tube is removed from service in the above described manner, support from the eggcrate structures is no longer needed. The criterion established by the licensee for removing tubes from service is described in detail below.

B. Concern About the Seismic Adequacy of the SONGS Steam Generators

The Petitioner asserts that the degradation of the steam generators, eggcrate supports could seriously weaken the supports and make the steam generators vulnerable to seismic events.

In its letter of May 16, 1997, the licensee committed to perform an evaluation of the effect of the degraded eggcrates on steam generator tube integrity in the SONGS Unit 3 steam generators before return to power from the Unit 3 1997 refueling outage. This initial evaluation was provided by the licensee in its letter of June 5, 1997, and included the effects of a postulated design-basis earthquake. The licensee submitted the final version of the degraded eggcrate support evaluation for SONGS Unit 3 on October 17, 1997. As stated in the previous section, the amount of eggcrate support degradation observed in SONGS Unit 2 was considerably less than that observed in Unit 3. Therefore, the staff concludes that demonstrating the ability of the SONGS Unit 3 steam generators to withstand a design basis seismic event will demonstrate the adequacy of the Unit 2 steam generators as well.

The staff's review of the seismic adequacy of the SONGS Unit 3 generators is detailed below.

1. Methodology and Acceptance Criteria

The Petitioner did not specifically request the staff to evaluate the eggcrate supports assuming other design loads concurrent with earthquake loads. However, to provide additional conservatism, and to conform with General Design Criterion (GDC) 2 of 10 CFR Part 50, Appendix A, the licensee, in its October 17, 1997, letter, evaluated the ability of the eggcrate supports to perform their intended safety function assuming the most limiting combination of load conditions.

GDC 2 requires, in part, that the design bases for structures, systems, and components important to safety reflect appropriate combinations of the effects of normal and accident conditions with the effects of natural phenomena such as earthquakes. The earthquake for which these plant features are designed is defined as the safe-shutdown earthquake (SSE).[2] The Petitioner's concerns on the adequacy of the seismic design of the SONGS units, based on information gathered from the Landers and Northridge earthquakes, were addressed previously by the staff in DD–97–23 (*see* footnote 1).

Appendix A of Standard Review Plan,[3] (SRP) Section 3.9.3, "[American Society of Mechanical Engineers] ASME Code Class 1, 2, and 3 Components, Component Supports, and Core Support Structures," delineates acceptable design limits and appropriate combinations of loadings associated with normal operation, postulated accidents, and specified seismic events for the design of Seismic Category I fluid system components (i.e., water- and steam-containing components). This appendix also provides that necessary plant features important to safety meet the appropriate design limits specified in Section III of the ASME Boiler and Pressure Vessel Code (ASME Code) when the component is subjected to concurrent loadings associated with the normal plant condition, the vibratory motion of the SSE, and the dynamic system loadings associated with the faulted plant condition. Faulted plant conditions are those operating conditions associated with postulated events of extremely low probability, such as loss-of-coolant accidents (LOCAs) or main streamline break (MSLB) accidents. The design limits and loading combinations utilized by the licensee in the October 17, 1997, evaluation of individual steam generator tubes are the same design limits and loading combinations that were reviewed and approved by the staff at the time of plant licensing. This evaluation is contained in Chapter 3 of NUREG–0712.[4] Therefore, the staff finds acceptable the licensee's use of these design limits and loading combinations in evaluating the impact of the degraded eggcrate supports on individual steam generator tubes.

The evaluation of the potential for lateral movement of the entire steam generator tube bundle (whole bundle evaluation) was not explicitly addressed during the staff's review performed at the time of plant licensing. Also, the ASME Code does not provide specific design limits for the whole bundle evaluation. The whole bundle evaluation contained in the October 17, 1997, letter performed by the licensee to verify that the structural integrity of the eggcrate is maintained to ensure that it does not shift in a way that could damage the tubes. This is not an ASME Code evaluation; however, ASME Code techniques were used by the licensee to generate and assess the results. The staff has reviewed the specific ASME Code techniques utilized by the licensee, and concludes that they provide conservative results, and are, therefore, acceptable for the whole bundle evaluation.

[2] The SSE is defined, in part, as "that earthquake which is based upon an evaluation of the maximum earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material. It is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components are designed to remain functional." See 10 CFR Part 100, Appendix A, Section III.(c).

[3] The Standard Review Plan (SRP) is published as NUREG–0800, and is used as guidance for the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants.

[4] NUREG–0712, "Safety Evaluation Report related to the Operation of San Onofre Nuclear Generating Station, Units 2 and 3," Chapter 3, February 1981.

Furthermore, the loading combinations used in the licensee's whole bundle evaluation are the same loading combinations used in the individual tube evaluations, and are the same loading combinations that were reviewed and approved at the time of plant licensing.

2. Degraded Eggcrate Support Assumptions

The staff reviewed the assumptions used in the licensee's October 17, 1997, evaluation regarding the amount of eggcrate support judged to be available, and verified that these assumptions were supported by the results of the licensee's inspections.

For the individual steam generator tube analysis, the licensee calculated the maximum loads that could occur assuming that adequate support was not available at two consecutive eggcrate levels (*see* Figure 1). The staff finds this assumption conservative and acceptable because the licensee has removed from service all tubes where two consecutive eggcrate levels were found degraded to the point where adequate support could not be assured.

For the whole bundle analysis, the licensee used the inspection results to sort the eggcrates into categories based on a conservative estimate of the remaining thickness of the eggcrate lattice bars. The staff reviewed the sorting criteria used by the licensee, and concludes that the material strength assumptions established by the licensee for the degraded eggcrate supports are conservative, and appropriate for evaluating the ability of the eggcrate structures to perform their intended function.

The visual inspections performed by the licensee during the 1998 mid-cycle outages for both units confirmed the appropriateness of these assumptions pertaining to the amount of eggcrate support degradation used in the licensee's evaluation.

3. Evaluation Results

Using the above described methodology and assumptions, the licensee determines that the peak calculated loads on the individual steam generator tubes would remain below the allowable design limits approved by NUREG–0712 during and following a postulated design basis earthquake.

The results of the licensee's whole bundle evaluation confirmed that the eggcrate structure will provide sufficient support to ensure that the tube bundle will not impact the eggcrate support ring during and following a postulated design basis earthquake.

The staff finds these results acceptable, and as detailed above, also finds acceptable the methodology and assumptions used by the licensee in the generation of these results. The staff concludes, therefore, that the amount of degradation observed in the eggcrate supports will not prevent the SONGS Units 2 and 3 steam generators from performing their intended safety functions.[5]

4. Confirmatory Actions

The licensee's 1998 mid-cycle inspection of the SONGS Unit 3 steam generators confirmed that the condition of the Unit 3 eggcrate internal supports remained within the analytical assumptions used in the licensee's evaluation contained in its October 17, 1997, letter and also supported the licensee's contention that the phenomenon (FAC) that led to the degradation of the eggcrates had been arrested by the chemical cleaning of the steam generators.

Furthermore, the licensee has committed in its letters to the NRC (April 15, 1998, for Unit 2 and October 17, 1997, for Unit 3) to inspect the eggcrate supports during future outages to assure that their condition remains within the analytical assumptions used in the licensee's evaluation. These inspections will continue to be conducted until it is established that further inspections are not required.

In summary, on the basis of the video inspection results for the steam generators in both units, and the staff's review of the detailed evaluations performed by the licensee, the staff concludes that the SONGS steam generators are fully capable of performing their intended safety function during and following a postulated SSE, and no retrofitting upgrade of the steam generators is required.

III. Conclusion

As explained above, there is no evidence of significant degradation of the SONGS Unit 2 steam generator eggcrate supports, and the extensive analyses demonstrate the ability of the steam generators in both SONGS units to perform their intended safety function. Accordingly, the Petitioner's requested action, pursuant to Section 2.206, is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 11th day of June 1998.

For the Nuclear Regulatory Commission.

Original signed by

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachments: Figures (3)

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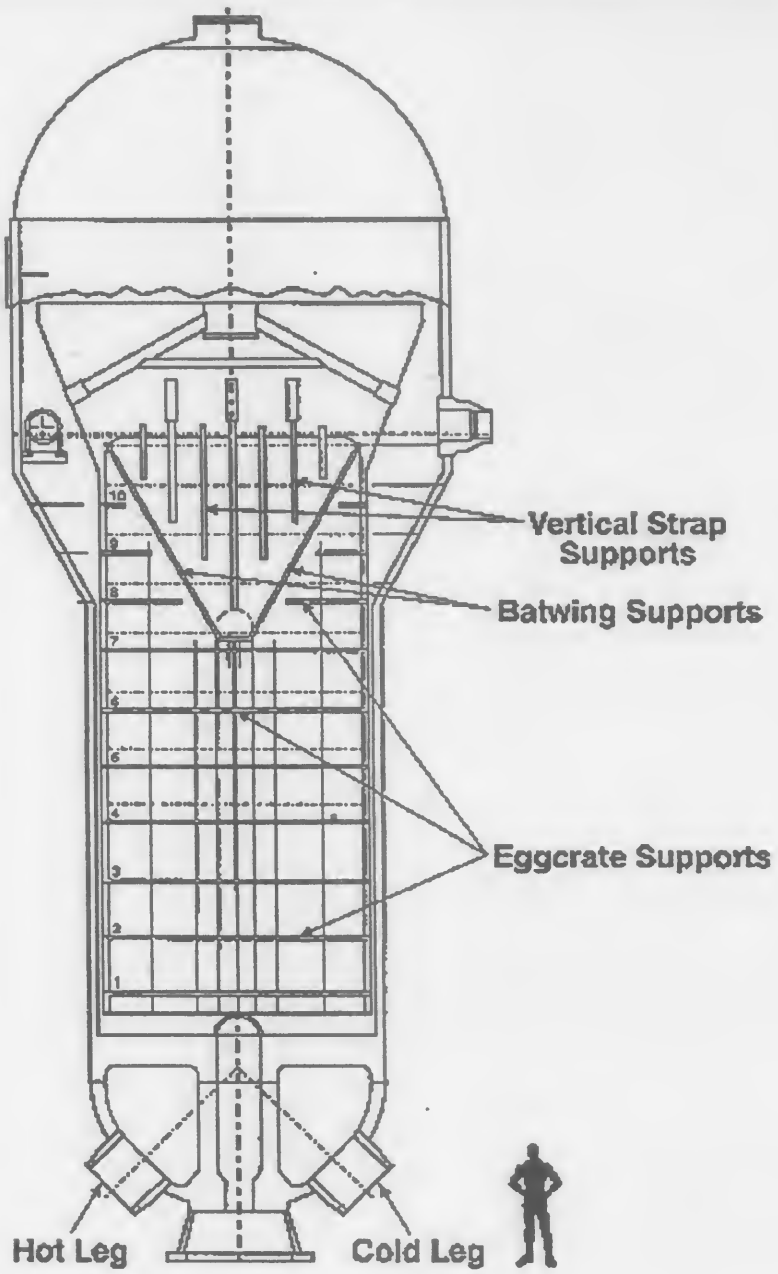
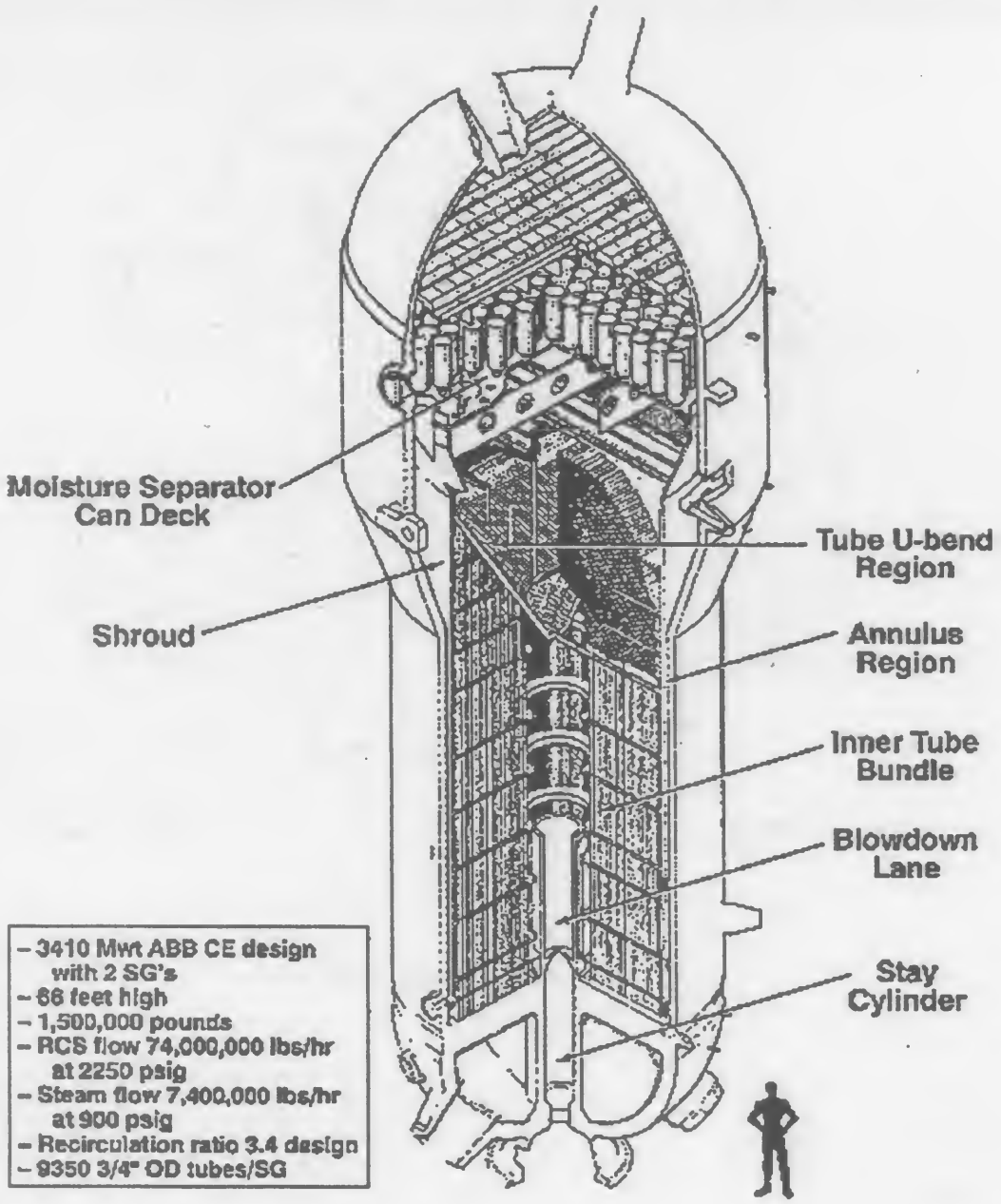
[5] Since the amount of support degradation in SONGS Unit 2 was observed to be considerably less than that observed in Unit 3, the NRC staff concludes that the licensee's October 17, 1997, evaluation of SONGS Unit 3 steam generator structural integrity and the staff's review of that evaluation support the adequacy of SONGS Unit 2 steam generators to withstand a design basis event and perform their intended safety function.



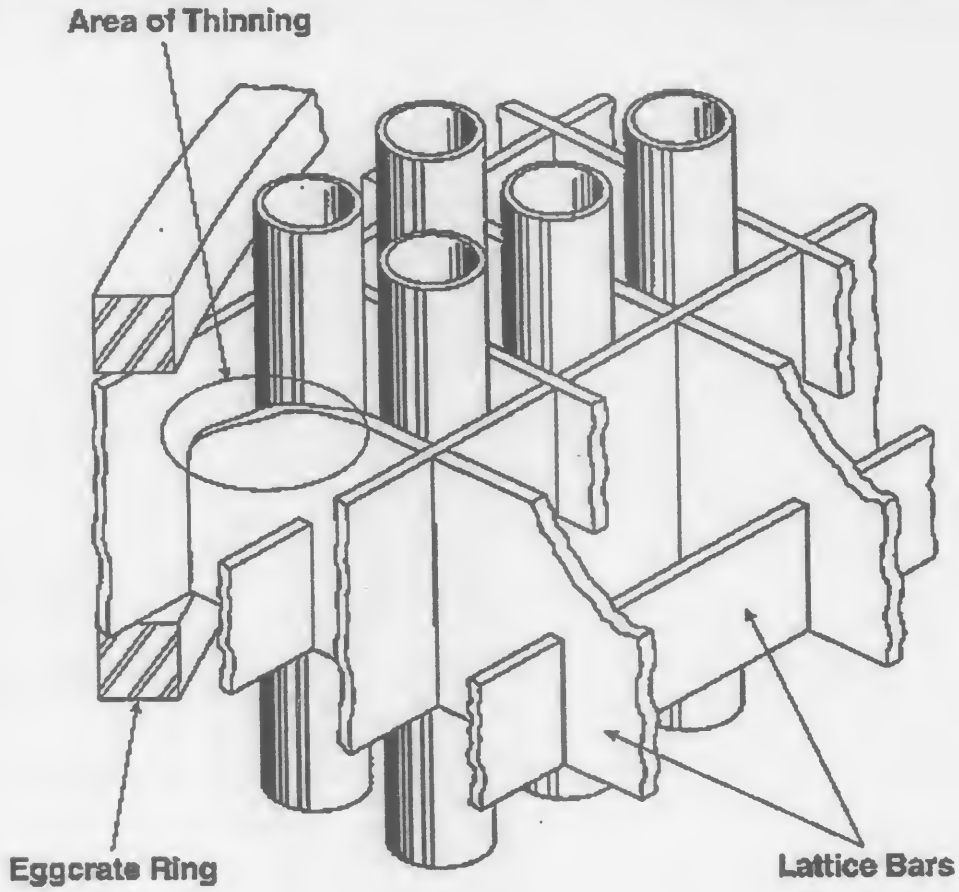
Steam Generator
Eggcrate Locations

Figure 1



Typical CE Steam Generator

Figure 2



Eggcrate Arrangement

Figure 3

[FR Doc. 98–16539 Filed 6–19–98; 8:45 am]
BILLING CODE 7590–01–C

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Part 257, SEC File No. 270–252, OMB Control No. 3235–0306
Form U–1, SEC File No. 270–128, OMB Control No. 3235–0125
Rule 58, Form U–9C–3, SEC File No. 270–400, OMB Control No. 3235–0457
Rule 71, Form U–12(I)–A, & Form U–12(I)–B SEC File No. 270–161, OMB Control No. 3235–0173
Rules 93–94, Form U–13–60, SEC File No. 270–79, OMB Control No. 3235–0153

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The rules under 17 CFR Part 257 implement sections of the Public Utility Holding Company Act of 1935 ("Act") that require registered holding companies and their subsidiary service companies to preserve records for certain periods. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise unregulated subsidiaries, the subsidiary service companies, and the regulated utility subsidiaries which the holding company controls, or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is one hour (18 recordkeepers × 1/18 hour = one burden hour).

Form U–1, under rule 20(c) of the Act, must be used by any person filing or amending an application or declaration under sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d) or (f) of the Act. The form must also be used for filings under any rule under other sections of the Act, for which a form is not prescribed. The Commission estimates that the total annual reporting and recordkeeping burden is 27,225 hours (121 recordkeepers × 225 hours = 27,225 burden hours). This represents an increase of 10,020 hours annually in the paperwork burden from the prior estimate, which was caused by an increase in the number of respondents for the period and the fact that the filings have become generally more complex.

Rule 58 under the Act, allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Acquisitions are made without prior Commission approval under section 20 of the Act. However, within 60 days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a certificate of notification on Form U–9C–3 containing the information prescribed by that form. The Commission requests this information because rule 58 of the Act requires it. The Commission uses this information to determine the existence of detriment, regarding the acquisition of certain energy-related companies, to interests the Act is designed to protect. The 61 recordkeepers together incur about 976 annual burden hours to comply with these requirements (61 recordkeepers × 16 hours = 976 burden hours.)

Rule 71 and Forms U–12(I)-A and U–12(I)-B implement subsection 12(i) of the Act, which makes it unlawful for an employee to prevent, advocate or oppose any matter affecting a registered holding company before Congress, the Commission or the FERC. The Commission estimates that the total annual reporting and recordkeeping burden is 167 hours (250 respondents × ⅔ hour = 167 burden hours). The purpose of collecting the information is to determine the existence of detriment to interests the Act is designed to protect. The Commission uses the information to enable it to enforce the provisions of section 12(i) of the Act.

Rule 93 imposes recordkeeping and record maintenance requirements on mutual and subsidiary service companies of registered holding companies. Under the rule, the service companies must keep their accounts and records according to the Uniform System of Accounts, as provided in 17 CFR 256. Further, the companies must maintain those records in the manner and for the periods provided in 17 CFR 257. Rule 94 requires service companies to file annual financial reports on Form U–13–60, as provided in 17 CFR 259.313. The purpose of requiring the holding company to retain the records is to permit audit or verification by the Commission, or by state utility commissions, of transactions between the holding company or its otherwise unregulated subsidiaries, the subsidiary service companies and the regulated utility subsidiaries which the holding company controls or to establish investors' rights. The Commission estimates that the total annual reporting and recordkeeping burden is 580 hours (40 respondents × 14.5 hours = 580 hours).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 15, 1998.

Maragaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16436 Filed 6–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–40094; File No. SR–NYSE–97–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Revise Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances

June 15, 1998.

I. Introduction

On December 29, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to revise the Exchange's policy for entry of market-on-close ("MOC") and limit-at-the-close ("LOC") orders and publication of order imbalances for both expiration and non-expiration days. On March 18, and June 4, 1998, respectively, the Exchange submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change to the Commission.

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on March 26, 1998.[5] One comment was received on the proposal.[6] This order approves the proposal as amended.

II. Description of the Proposal

Special procedures regarding the entry of MOC and LOC orders[7] have been in place on the Exchange for more than ten years.[8] These procedures are designed to alleviate excess volatility at the close by providing MOC and LOC imbalance information to market participants in a timely manner to attract contra-side interest. The procedures have been refined over the years based on the Exchange's experience and input from constitutes.[9] The Exchange is now proposing additional refinements to the procedures to enhance their usefulness.

Current Procedures

The current procedures require that MOC and LOC orders in any stock be entered by 3:40 p.m. on expiration days, and by 3:50 p.m. on non-expiration days.[10] A member may not cancel or reduce a MOC or LOC order in any stock after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days, (except in a case of legitimate error or to comply with the provisions of Exchange Rule 80A). In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m. or 3:50 p.m., for expiration and non-expiration days, respectively.

For the selected stocks identified by the Exchange (formerly known as "pilot stocks")[11] and published in its "special stock list," a single publication of imbalances of 50,000 shares or more must be made as soon as practicable after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days. On expiration days, stocks on the special stock list that do not have an imbalance of 50,000 shares or more at 3:40 p.m. must publish a "no imbalance" status. Imbalances of 50,000 shares or more must also be published for stocks going into or out of an index. For all other stocks (*i.e.*, those that are not on the "special stock list" and those not going into or out of an index), an imbalance of 50,000 shares or more may be (but is not required to be) published at the request of the specialist, with Floor Official approval. After the 3:40 p.m. or 3:50 p.m. imbalance publication, MOC and LOC orders may be entered only to offset a published imbalance. No MOC and LOC orders may be entered if there is no imbalance publication. On expiration days, the entry of MOC or LOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted, even if such orders might offset published imbalances.

New Procedures

In July of 1997, the NYSE's Market Performance Committee appointed a subcommittee to review MOC procedures. The subcommittee recommended that the Exchange implement several changes to increase the effectiveness of the procedures. These changes, which the Exchange is proposing to implement, are:

- The Exchange is proposing a 3:40 p.m. deadline for entry of MOC and LOC orders and indication of MOC interest to specialists by Floor brokers representing any MOC orders, every day. This earlier deadline (from 3:50 p.m. to 3:40 p.m.) on non-expiration days would provide additional time to attract contra-side interest.
- The Exchange is also proposing mandatory publication of all MOC/LOC imbalances of 50,000 shares or more in *all* stocks and *any* trading day as soon as practicable after 3:40 p.m.[12] Publication of an imbalance of *less than* 50,000 shares may be made at that time with the approval of a Floor Official. This proposed new provision would permit, but not require, the publication of an imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a stock.
- The Exchange is also proposing to include both MOC and marketable LOC orders in the imbalance publication.[13] The determination of whether an LOC order is "marketable" would be based upon the last sale price at 3:40 or 3:50 p.m., depending on the time of the order imbalance publication. This means that LOC orders to buy at a higher price would be included with the buy MOC orders; LOC orders to sell at a lower price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation.
- The Exchange is also proposing a new procedure to permit non-mandatory publication of MOC/LOC imbalances of *any* size between 3:00 and 3:40 p.m., with Floor Official approval; these publications would be informational only, with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m. for all stocks on all days, regardless of size, to provide timely imbalance information to market participants.
- An additional imbalance publication on both expiration and non-expiration days, must be made at 3:50 p.m. for any stock that had an imbalance

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Donald Siemer, Director, Market Surveillance, NYSE to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission dated March 13, 1998 ("Amendment No. 1").

[4] *See* Letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE to David Sieradzki, Attorney, Division, Commission dated June 1, 1998 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarifies the proposal to indicate that, where a bona fide error has been made, causing the cancellation of an order, or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m., the Exchange would publish the imbalance even though there had been no 3:40 p.m. publication.

[5] Securities Exchange Act Release No. 39770 (Mar. 18, 1998), 63 FR 14747 (Mar. 26, 1998).

[6] *See* Letter from Terry McCloskey, Vice President, BNP Securities, Inc. to Jonathan G. Katz, Secretary, Commission dated April 15, 1998 ("BNP Letter").

[7] A MOC order is a market order to be executed in its entirely at the closing price on the Exchange. A LOC order is a limit order entered for execution at the closing price, provided that the closing price is at or within the limit specified. *See* NYSE Rule 13.

[8] The Exchange's pilot program for expiration day auxiliary closing procedures was permanently approved by the Commission on October 30, 1996. *See* Securities Exchange Act Release No. 37894 (Oct. 30, 1996), 61 FR 56987 (Nov. 5, 1996) (order approving SR–NYSE–96–31).

[9] The Exchange's LOC pilot program will expire on July 31, 1998. The Exchange has requested that the Commission permanently approve the program (SR–NYSE–98–15).

[10] The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

[11] The pilot stocks consisted of the 50 most highly capitalized Standard & Poor's ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included in the S&P stock group.

[12] As discussed above, currently, the Exchange requires mandatory publication of imbalances of 50,000 shares or more only in stocks on the Exchange's special stock list and stocks being added to or dropped from an index on expiration days as soon as practicable after 3:40 p.m. (or 3:50 p.m. for non-expiration days).

[13] Currently, imbalance publications indicate MOC interest but not LOC interest. *See* Amendment No. 1, *supra* note 3.

publication at 3:40 p.m.[14] If the imbalance at 3:50 p.m. is less than 50,000 shares, a "no imbalance" status must be published, except that an imbalance of less than 50,000 shares may be published with Floor Official approval, provided there had been an imbalance publication at 3:40 p.m. Except under two limited circumstances,[15] if there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m., since MOC and LOC orders could not be entered during the interim to change the imbalance. If the 3:50 p.m. imbalance publication reversed the first imbalance publication, only MOC and LOC orders which offset the 3:50 p.m. imbalance would be permitted to be entered thereafter.

• MOC/LOC order entry is precluded after 3:40 p.m. in all stocks on all days, unless an imbalance is published, in which case entry of MOC/LOC orders would be permitted only on the contra side of the published imbalance.

III. Comment Summary

As noted above, the Commission received one comment on the proposal.[16] The commenter agreed that order imbalance dissemination reduces volatility at the close and favors expanding imbalance indications to all listed issues. In addition, the commenter noted that neither the NYSE nor the American Stock Exchange ("Amex") provide members with information regarding order imbalances at the close in electronic form. The commenter believes that if the NYSE and Amex were required to disseminate order imbalances through the Securities Industry Automation Corporation ("SIAC"),[17] customers would receive better information and therefore, better executions.

IV. Discussion

The Commission finds that the proposed rule change is consistent with Section 6[18] of the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5)[19] requirements that the rules of an Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[20]

Over the past several years, the Exchange and other self-regulatory organizations have been developing procedures to minimize excess market volatility that may arise from the liquidation of stock positions on expiration days.[21] Special procedures regarding the entry of MOC orders on Expiration Fridays were first used in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options and options on stock index futures on Expiration Fridays.[22] On April 10, 1995, the Commission approved a proposed rule change to institute similar auxiliary closing procedures on non-expiration days.[23] Finally, on March 3, 1994, the Exchange, as an additional means of attracting contra-side interest to help alleviate MOC order imbalances, initiated a pilot program relating to the entry of LOC orders on both expiration and non-expiration days.[24] These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC/LOC orders at the end of the day. If there is a substantial imbalance on one side of the market, the procedures provide the investing public with timely and reliable notice of that imbalance and with an opportunity to make appropriate investment decisions in response.

Generally, the NYSE auxiliary closing procedures have worked well and may have resulted in more orderly markets on both expiration and non-expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could create a situation in which member firms and their customers would be unwilling to acquire significant positions.

In this regard, the Commission notes that the proposed rule change may increase public awareness of MOC/LOC order imbalances and provide the market participants with more of an opportunity to make appropriate investment decisions. Specifically, the proposal will impose a deadline of 3:40 p.m. for entry of all MOC/LOC orders on both expiration and non-expiration days. Floor brokers representing MOC orders also must indicate their MOC interest to the specialist by 3:40 p.m. every day. In conjunction with the prohibition on canceling or reducing any MOC/LOC order after 3:40 p.m., these requirements should allow the specialist to make a timely and reliable assessment, for every NYSE-listed stock, on expiration and non-expiration days alike, of MOC/LOC order flow and its potential impact on closing prices.

The proposal would also make several changes to imbalance publication procedures, which are designed to get more information to the public earlier in the day. First, the proposal would integrate marketable LOC orders into the current MOC order imbalance publication. Second, the proposal would require publication of MOC/LOC imbalances of 50,000 shares or more in all securities on any trading day as soon as practicable after 3:40 p.m. The proposal also requires an additional publication of MOC/LOC imbalances of 50,000 shares or more at 3:50 p.m. for stocks that reported an imbalance at 3:40 p.m. If the order imbalance for a stock publishing an imbalance at 3:40 p.m. has fallen below 50,000 shares by 3:50 p.m. then, a "no imbalance" message must be posted unless Floor Official approval is sought to publish an imbalance of less than 50,000 shares.

The Commission believes that the enhanced publication requirements described above are appropriate and consistent with the Act. Integrating marketable LOC orders into the order imbalance publication should serve to better reflect actual investor interest. Also, requiring an additional order imbalance publication at 3:50 p.m. for securities having a published imbalance as of 3:40 p.m. may help ease market volatility at the close by attracting additional offsetting MOC/LOC orders for stocks that have a significant order imbalance as of 3:50 p.m. With respect to changing the deadline for entering MOC/LOC orders on non-expiration days, the Commission believes that, by giving market participants more time to react to published MOC/LOC order imbalances, the proposal may contribute to reducing volatility at the close.

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[14] Currently, the Exchange requires only a single imbalance publication at 3:40 p.m. on expiration days and at 3:50 p.m. on non-expiration days. *See* Amendment No. 1, *supra* note 3.

[15] *See* Amendment No. 2, *supra* note 4.

[16] *See* BNP Letter, *supra* note 6.

[17] SIAC processes last sale information and quotation information reported to it by its participants (eight national securities exchanges and the National Association of Securities Dealers, Inc.) for consolidation and dissemination to vendors and others.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

[21] *See supra* note 8.

[22] *See supra* note 10.

[23] *See* Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving SR–NYSE–94–44).

[24] *See supra* note 9.

Finally, the Exchange proposes to permit dissemination of MOC/LOC order imbalances of any size between 3:00 p.m. and 3:40 p.m. with Floor Official approval. These optional publications would be informational only and would be required to be updated at 3:40 p.m., regardless of size. The Commission believes that this optional publication of MOC/LOC order imbalances is consistent with the Act in that it should increase the amount of accurate market information available to the public.[25] The Commission believes that this dissemination of MOC/LOC order imbalances prior to 3:40 p.m. could help reduce volatility at the close by giving market participants more time to react to reported order imbalances.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the proposal to indicate that, under certain circumstances, the Exchange may publish an order imbalance at 3:50 p.m. where an imbalance was not published at 3:40 p.m.[26] The Exchange has represented that, under certain limited circumstances described in Amendment No. 2 (*i.e.*, where a bona fide error was made causing an order to be cancelled or an order was improperly entered when there was no imbalance, resulting in an imbalance of 50,000 shares or more at 3:50 p.m.) the Exchange would publish an order imbalance at 3:50 p.m. even if an imbalance had not been published at 3:40 p.m. As a result, the Commission does not believe that Amendment No. 2 raises any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period during which one comment, generally supporting the proposal, was received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)[27] of the Act, to approve Amendment No. 2 to the Exchange's proposal on an accelerated basis.

[25] In approving this proposed rule change, the Commission is aware of the possibility that the publication of order imbalances on a more frequent basis may allow market participants to enter orders without the good faith intention that the order be executed, but instead with the intention of canceling the order and profiting in some way from a market reaction to the publication of the order. The Commission expects that the Exchange will be mindful of any potential formarket manipulation or other abuse that the amended procedures may create and that the Exchange will be vigilant in its surveillance efforts to ensure that the MOC/LOC procedures are executed in a manner consistent with the Act and the rules thereunder and the rules of the Exchange.

[26] *See* Amendment No. 2, *supra* note 4.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether that amendment 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–36 and should be submitted by July 13, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSE–97–36) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–16510 Filed 6–19–98; 8:45 am]

BILLING CODE 8010–01–M

[27] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998 [63 FR 11472].

DATES: Comments on this notice must be received on or before July 22, 1998.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, FAR part 39.

OMB Control Number: 2120–0056.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of the affected products.

Abstract: Airworthiness directives are regulations issued to require corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Records of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition.

Estimated Burden: The estimated total annual burden is 6,771 hours.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–16509 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports and Guidance Documents; Air Carriers; Cessation of Operations

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department's Office of Aviation Analysis issues this notice to provide guidance regarding the effect that a cessation of operations pursuant to a voluntary agreement with the Federal Aviation Administration (FAA) has upon an air carrier's economic authority issued pursuant to 49 U.S.C. 41102 or 41738. The notice advises U.S. certificated and commuter air carriers that the Department considers the cessation of operations pursuant to such a voluntary agreement with the FAA to be a cessation of operations within the meaning of 14 CFR 204.7. Therefore, the carrier may not hold out, sell, wet lease, provide or obtain subservice, or conduct any other direct air transportation operations until it has again been found fit.

FOR FURTHER INFORMATION CONTACT: William J. Wagner, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Tel. No. (202) 366–9357.

John V. Coleman,

Director, Office of Aviation Analysis.

[FR Doc. 98–16463 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33612]

The Burlington Northern and Santa Fe Railway Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between Dallas, TX, in the vicinity of UP's milepost 214.6 (Dallas Subdivision) and Tower 55, Fort Worth, TX, in the vicinity of UP's milepost 245.5 (Dallas Subdivision), a distance of approximately 30.9 miles.[1]

The transaction was scheduled to be consummated on June 15, 1998.

The purpose of the trackage rights is to allow BNSF to operate over an alternative line while BNSF's line is undergoing maintenance and repair.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33612, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: June 15, 1998.

[1] On June 4, 1998, BNSF and UP filed a petition for exemption in STB Finance Docket No. 33612 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF and UP request that the Board permit the overhead trackage rights arrangement described in the present proceeding to expire on July 31, 1998. That petition will be addressed by the Board in a separate decision.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16531 Filed 6–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–120–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–120–86 (TD 8584), Capitalization of Interest (§§ 1.263A–8(b)(2)(iii), 1.263A–9(d)(1), 1.263A–9(e)(1), 1.263A–9(f)(1)(ii), 1.263A–9(f)(2)(iv), 1.263A–9(g)(2)(iv)(C), 1.263A–9(e)(1) and 1.263A–9(g)(3)(iv)).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Interest.

OMB Number: 1545–1265.

Regulation Project Number: IA–120–86.

Abstract: Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate

activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100.

Estimated Number of Recordkeepers: 500,000.

Estimated Time Per Recordkeeper: 14 minutes.

Estimated Total Annual Recordkeeping Hours: 116,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16412 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, EE–113–90 (TD 8324), Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (§ 1.62–2).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

OMB Number: 1545–1148.

Regulation Project Number: EE–113–90.

Abstract: These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The regulations affect employees who receive payments and payors who make payments under such arrangements.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 1,419,456.

Estimated Time Per Recordkeeper: 30 minutes.

Estimated Total Annual Recordkeeping Hours: 709,728.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16413 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–97–91; PS–101–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–97–91 and PS–101–90 (TD 8448), Enhanced Oil Recovery Credit (§§ 1.43–3(a)(3) and 1.43–3(b)(3)).

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1292.

Regulation Project Number: PS–97–91 and PS–101–90.

Abstract: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 73 hours.

Estimated Total Annual Burden Hours: 1,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16414 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2119

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2119, Sale of Your Home.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sale of Your Home

OMB Number: 1545–0072.

Form Number: 2119.

Abstract: Form 2119 is filed with Form 1040 by individuals to report the sale of their main residence and to:

- Claim the exclusion for sales after May 6, 1997, or
- Elect the one-time exclusion for people who were age 55 or older on the date of sale, or
- Postpone paying tax on all or part of the gain.

Current Actions: Form 2119 will become obsolete for tax year 1998 and subsequent years, due to changes made to Internal Revenue Code section 121 by the Taxpayer Relief Act of 1997 (particularly the increase in the exclusion amount to $250,000/$500,000) which will allow most taxpayers to fully exclude gain on home sales after May 6, 1997. Taxpayers who need to figure a reduced exclusion or whose gain is more than $500,000 should use the worksheet in Publication 523, Selling Your Home, which will retain explanations of prior law. Any taxable gain would be carried forward to Schedule D (Form 1040). Taxpayers who sold homes under the prior law and who are reporting either gain or the replacement of the home would still need to file Form 2119. A supply of 1997 Forms 2119 will be available for this purpose.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000

Estimated Time Per Respondent: 3 hr., 25 min.

Estimated Total Annual Burden Hours: 34,100

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16415 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065, U.S. Partnership Return of Income, Schedule D, Capital Gains and Losses, and Schedule K–1, Partner's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Return of Income (Form 1065), Capital Gains and Losses (Schedule D), and Partner's Share of Income, Credits, Deductions, etc. (Schedule K–1).

OMB Number: 1545–0099.

Form Number: 1065, Schedule D, and Schedule K–1.

Abstract: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used by the IRS to verify correct reporting of partnership items and for general statistics. The information is used by partners to determine the income, loss, credits, etc., to report on their tax returns.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals or households.

Estimated Number of Respondents: 1,513,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,122,528,688.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16416 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–INT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–INT, Interest Income.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Income.

OMB Number: 1545–0112.

Form Number: 1099–INT.

Abstract: Form 1099–INT is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the

recipient has included the proper amount of interest on his or her income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 274,797,664.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 54,959,533.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16417 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–A, U.S. Corporation Short-Form Income Tax Return.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Short-Form Income Tax Return.

OMB Number: 1545–0890.

Form Number: 1120–A.

Abstract: Form 1120–A is used by small corporations with less than $500,000 of income and assets to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether these corporations have correctly computed their tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 285,777.

Estimated Time Per Respondent: 113 hr., 28 min.

Estimated Total Annual Burden Hours: 32,427,116.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16437 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2555–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2555–EZ, Foreign Earned Income Exclusion.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Earned Income Exclusion.

OMB Number: 1545–1326.

Form Number: 2555–EZ.

Abstract: U.S. citizens and resident aliens who qualify may use Form 2555–EZ instead of Form 2555, Foreign Earned Income, to exclude a limited amount of their foreign earned income. Form 2555–EZ is a simpler form that can be used by taxpayers whose foreign earned income is $70,000 or less and who satisfy certain other conditions. The information on the form is used by the IRS to determine if a taxpayer qualifies for, and has properly computed, the foreign earned income exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 43,478.

Estimated Time Per Respondent: 2 hr., 1 min.

Estimated Total Annual Burden Hours: 87,391.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16438 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 792,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16439 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 926

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.

OMB Number: 1545–0026.

Form Number: 926.

Abstract: Form 926 is filed by any U.S. person who transfers property to a foreign corporation, foreign estate or trust, or foreign partnership.

Current Actions: Form 926 is being revised to reflect the repeal of Internal Revenue Code sections 1491 through 1494 and changes to Code sections 367 and 6038B. However, the actual changes to the form have not been decided upon at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondents: 22 hr., 45 min.

Estimated Total Annual Burden Hours: 22,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not require to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates the capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16440 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4, Employee's Withholding Allowance Certificate.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee's Withholding Allowance Certificate.

OMB Number: 1545–0010.

Form Number: W–4.

Abstract: Employees file Form W–4 to tell employers their marital status, the number of withholding allowances claimed, the dollar amount they want withholding increased each pay period, and if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 54,209,079.

Estimated Time Per Respondent: 2 hr., 6 min.

Estimated Total Annual Burden Hours: 113,839,066.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16441 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4835

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4835, Farm Rental Income and Expenses.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Farm Rental Income and Expenses.

OMB Number: 1545–0187.

Form Number: 4835.

Abstract: Form 4835 is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by a tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. The information on the form is used by the IRS to determine whether the proper amount of farm rental income received by the taxpayer has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and farms.

Estimated Number of Respondents: 407,719.

Estimated Time Per Respondent: 4 hr., 23 min.

Estimated Total Annual Burden Hours: 1,789,886.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16442 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8834

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8834, Qualified Electric Vehicle Credit.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Electric Vehicle Credit.

OMB Number: 1545–1374.

Form Number: 8834.

Abstract: Internal Revenue Code section 30 allows a 10% tax credit, not to exceed $4,000, for qualified electric vehicles placed in service after June 30, 1993. Form 8834 is used to compute the allowable credit. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 7 hr., 50 min.

Estimated Total Annual Burden Hours: 3,915.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16443 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098, Mortgage Interest Statement.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Statement.

OMB Number: 1545–0901.

Form Number: 1098.

Abstract: Section 6050H of the Internal Revenue Code requires mortgagors to report mortgage interest, including points, of $600 or more paid to them during the year by an individual. The form will be used by the IRS to verify that taxpayers have deducted the proper amount of mortgage interest expense or have included the proper amount of mortgage interest refunds in income on their tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Responses: 66,989,155.

Estimated Time Per Response: 7 min.

Estimated Total Annual Burden Hours: 7,815,401.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16444 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–5

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–5, Earned Income Credit Advance Payment Certificate.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Earned Income Credit Advance Payment Certificate.

OMB Number: 1545–1342.

Form Number: W–5.

Abstract: Form W–5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W–5 to their employers. The employer uses the information on the form to compute the amount of the advance payment to include with the employee's pay.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 35,200.

Estimated Time Per Respondent: 43 min.

Estimated Total Annual Burden Hours: 24,992.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16445 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-S, Proceeds From Real Estate Transactions.

DATES: Written comments should be received on or before August 21, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Real Estate Transactions.

OMB Number: 1545–0997.

Form Number: 1099–S.

Abstract: Internal Revenue Code section 6045(e) and the regulations thereunder require persons treated as real estate brokers to submit an information return to the IRS to report the gross proceeds from real estate transactions. Form 1099-S is used for this purpose. The IRS uses the information on the form to verify compliance with the reporting rules regarding real estate transactions.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Responses: 3,646,110.

Estimated Time Per Response: 8 min.

Estimated Total Annual Burden Hours: 486,148.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–16447 Filed 6–19–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition: Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Sacred Visions: Early Painting from Tibet" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 5, 1998, to on or about January 17, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: June 16, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–16446 Filed 6–19–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW, Washington, DC 20547–0001.

Corrections

Federal Register
Vol. 63, No. 119
Monday, June 22, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0992]

Truth in Lending

Correction

In rule document 98–8829, beginning on page 16669, in the issue of Monday, April 6, 1998, make the following corrections:

PART 226 [Corrected]

1. On page 16677, in Supplement I to Part 226, in the first column, in paragraph 10.ii.A., in the last line "14(c)10.11.B" should read "14(c)10.ii.B".

2. On the same page, in the same section, in the same column, in paragraph 10.ii.B.1., in the second line, "14(c)10.11.A" should read "14(c)10.ii.A".

BILLING CODE 1505-01-D

federal register

Monday
June 22, 1998

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 213
Track Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 8]

RIN 2130–AA75

Track Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends the Track Safety Standards to update and enhance its track safety regulatory program. To address today's railroad operating environment, these amendments present additional regulatory requirements, including standards specifically addressing high speed train operations. FRA issues these changes to improve track safety and provide the railroad industry with the flexibility needed to effect a safer and more efficient use of resources. The amendments reflect recommendations submitted to FRA by the Railroad Safety Advisory Committee. The provisions included in this notice become effective with this rule. However, FRA anticipates that further amendments will be added to address the use of Gage Restraint Measuring Systems.

DATES: *Effective Date:* This final rule is effective September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3344), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION:

Introduction

The first Federal Track Safety Standards were implemented in October, 1971, following the enactment of the Federal Railroad Safety Act of 1970 in which Congress granted to FRA comprehensive authority over "all areas of railroad safety." See 36 FR 20336 and 49 U.S.C. 20101 *et seq.* FRA envisioned the new standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development.

FRA amended the Track Safety Standards with minor revisions several times in the past two decades. It began a project to revise the standards extensively in 1978, but later withdrew the effort when investigation revealed that considerably more data collection and analysis were necessary to support recommended revisions. A less extensive revision of the Track Safety Standards was issued in November, 1982. Since then, FRA has acquired much information crucial to further development of the Track Safety Standards through the enhanced statistical analysis capabilities resulting from additional field reporting requirements and improved data collection processes.

Statutory Background

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

> (a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—
>
> (1) Procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;
>
> (2) The need for revisions to regulations on track excepted from track safety standards; and
>
> (3) Employee safety.
>
> (b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.
>
> * * * * *
>
> (d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—
>
> (1) Inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and
>
> (2) Any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

Petitions for Rulemaking

In May, 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards. The petition suggested substantive changes to the standards, the addition of new regulations addressing recent developments in the industry, as well as the reinstatement of many of the regulations deleted from the standards in 1982. The BMWE also petitioned FRA to further address employee safety by incorporating in the Track Safety Standards certain sections of the Occupational Safety and Health Standards presently administered by the U.S. Department of Labor.

In March, 1992, the Association of American Railroads (AAR) submitted to FRA a list of recommended revisions to the Track Safety Standards. The AAR suggested some changes in the wording of existing regulations to provide additional flexibility to accommodate future innovations in railroad technology. Several suggested revisions included new approaches to determining compliance with certain existing regulations. Most notable among those was AAR's proposal that the revised track standards permit the use of a Gage Restraint Measuring System (GRMS) in place of detailed crosstie and fastener requirements.

Proceedings to Date

On November 16, 1992, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) in this docket. *See* 57 FR 54038. The ANPRM summarized FRA's knowledge about developments in the rail industry in the past two decades and then posed some 52 questions regarding how those developments should be addressed in the revised track safety standards.

The ANPRM also announced plans for four public workshops in which technically-knowledgeable persons with specialized experience in track maintenance were invited to share their views with FRA in an informal setting. The workshops were fact-finding sessions comprised of informal give-and-take exchanges between industry, labor, and government professionals charged with the administration of the track safety standards on a day-to-day basis. They constituted an initial step by FRA to use more active collaboration with labor, railroad management, manufacturers, state governments, and public interest associations in structuring the revised regulations.

Participants in the workshops included representatives of major and short line railroads, the AAR, the American Short Line Railroad Association (ASLRA), the BMWE, as well as individuals with a particular interest in certain areas of the track safety standards. In addition to the workshops, FRA invited interested

persons to submit written comments to the questions posed in the ANPRM. Approximately 30 individuals, railroads, and industry groups submitted their suggestions and observations.

Following one workshop which included an extensive discussion about the safety of maintenance-of-way employees, FRA decided to isolate that issue from this proceeding so that it could be addressed thoroughly in a separate rulemaking. That issue became the focus of a proceeding addressing roadway worker safety, FRA's first negotiated rulemaking. FRA established its first formal regulatory negotiation committee in 1994. After months of discussions and debates, the committee reached consensus conclusions and recommended provisions for an NPRM to the Federal Railroad Administrator (Administrator) on May 17, 1995. An NPRM based upon those recommendations was published on March 14, 1996 (*see* 61 FR 10528), and a final rule was issued on December 16, 1996 (*see* 61 FR 65959). Thus, a significant portion of the mandate of the Rail Safety Enforcement and Review Act of 1992 calling for a general revision of the Track Safety Standards already has become effective.

The Railroad Safety Advisory Committee and the Track Working Group

In past rulemakings, interested parties generally have approached the proceedings in an adversarial manner, a tactic that often inhibited the development of the best regulatory solutions to resolve difficult safety issues. In addition, parties also have resorted to pressuring Congress for legislation that would grant regulatory results with which FRA disagreed or were at odds with FRA's regulatory agenda. FRA concluded, therefore, that inclusion of these parties in its regulatory process would result in a more positive approach to developing the best solutions to pressing safety problems.

Although FRA gathered much information in the 1993 track workshops, as well as in similar workshops associated with other rulemaking proceedings, the agency recognized that continued use of these "ad hoc" collaborative procedures for each rulemaking was not the most effective means of accomplishing the agency's goal of achieving a more consensus-based regulatory program. Following the success in 1995 of the negotiated rulemaking addressing roadway worker safety, FRA decided that several pending rulemakings, including this proceeding to revise Part 213, should advance under a new rulemaking model that relies upon consensus among various members of the affected industry and the regulated community. On March 11, 1996, FRA announced formation of the Railroad Safety Advisory Committee (RSAC), the centerpiece of the agency's new regulatory program which emphasizes rulemaking by consensus with those most affected by the agency's regulations. *See* 61 FR 740.

The RSAC is comprised of 48 individual representatives drawn from 27 member organizations. The membership of the RSAC is representative of those interested in railroad safety issues, including railroad owners, manufacturers, labor groups, state government groups, and public interest associations. It's sponsor is the Administrator, who recommends specific issues for it to address. The RSAC operates by consensus. It is authorized to establish smaller "working groups" to research and initially address the issues recommended by the Administrator and accepted by the RSAC to resolve.

Most of the text of this final rule was recommended to FRA by the RSAC. The committee was tasked by the Administrator to formulate and present to FRA recommendations for new regulations and revisions of existing ones.

In accordance with established RSAC procedures, RSAC formed a Track Working Group, comprised of approximately 30 representatives from railroads, rail labor, trade associations, state government, track equipment manufacturers, and FRA, to develop and draft a proposed rule for the revision of Part 213. It met periodically over a span of six months in 1996.

The Track Working Group identified issues for discussion from several sources. One source of issues was, of course, the statutory mandates issued by Congress in 1992 and in 1994. Two other sources were the BMWE's petition and AAR proposals. Several issues came to the Track Working Group by way of requests for consideration made by FRA's track safety Technical Resolution Committee. The group also examined track issues involved in a number of recommendations made to FRA by the National Transportation Safety Board (NTSB) in the past decade. Discussions utilized information acquired by FRA through its research and development program, as well as from findings from routine agency investigations and accident investigations. Finally, the Track Working Group systematically surveyed the existing regulations to identify those sections and subsections that needed updating or, in some cases, deletion.

At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC for approval to recommend it to the Administrator. As required by RSAC procedures, each provision in the proposed rule had received unanimous approval by the members of the Track Working Group. At the request of the BMWE, the RSAC agreed to defer the vote on whether to recommend the proposed rule to the Administrator to provide that organization additional time to inform its members. At the time of the formal vote by mail on November 21, 1996, representatives of many of the labor unions withdrew support of the proposed rule and recommended that it be returned to the Track Working Group for further discussion.

Despite the lack of support by many RSAC representatives of rail labor, the number of votes cast in favor of recommending the proposed rule to the Administrator exceeded the number necessary for a simple majority. RSAC's procedures provide that where there is a majority vote to recommend to the Administrator a rule presented to the RSAC with full consensus of the working group that produced it, the RSAC will recommend adoption of the rule by the Administrator. Following those procedures, the RSAC formally recommended to the Administrator that FRA issue the proposed rule as it was drafted.

On July 3, 1997, FRA published a Notice of Proposed Rulemaking (NPRM) which included substantially the same rule text and preamble developed by the Track Working Group. *See* 62 FR 36138. In developing the regulatory evaluation for the NPRM, FRA attempted to incorporate additional data in the cost/benefit analysis beyond the impact data provided by the Track Working Group. In the NPRM, FRA requested additional relevant data to use in the regulatory evaluation for this final rule, but parties who had access to relevant data did not respond to that request.

Comments and Responses

The NPRM generated comments from 12 sources. Four of the commenters, namely, the AAR, the BMWE, the ASLRA, and Amtrak, were represented on the Track Working Group and helped draft the recommended rule which became the basis for the NPRM. All four of those commenters expressed support for the RSAC process.

The BMWE stated that it agrees with many of the revisions proposed in the NPRM, but that the standards proposed

therein "do not go far enough to ensure the integrity of the track structure." The BMWE stated that "several significant deficiencies" led that group, as well as RSAC members representing other labor organizations, to recommend to RSAC that the proposed rule as drafted by the Track Working Group be returned to that group for further consideration.

The AAR, in its comments to the docket, stated that it continues to support the NPRM and the language drafted by the Track Working Group. However, the AAR also added a request that should FRA revise any of the proposed rule in direct response to comments by RSAC participants who withdrew support of the rule drafted by the Track Working Group, then FRA would also re-examine the positions the AAR originally expressed about those issues. The AAR stated that its support of the proposed rule reflects that organization's willingness to compromise some of its positions in the interest in reaching consensus about the proposed rule in the Track Working Group. Therefore, the AAR's general support of the NPRM should not be misconstrued as agreement by the organization with each and every provision of the NPRM.

FRA has not significantly changed the NPRM based on comments from other RSAC participants who withdrew support for the rule proposed by the Track Working Group. Thus the AAR's suggested revisions based on that contingency are not examined in the "Section By Section Analysis" portion of this final rule.

Continuous Welded Rail (CWR)

In the first track safety standards published in 1971, § 213.119 dealt with CWR in a rather general manner, stating simply that CWR must be installed at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends, and that it should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature. (*See* 36 FR 20341.) In 1979, when FRA proposed a significant revision of Part 213, the agency suggested that this subsection be eliminated because it provided "little guidance to railroads" and was "difficult to enforce." The agency further stated that research had "not advanced to the point where specific safety requirements can be established." (*See* 44 FR 52114.) However, when the proposed revision was withdrawn in 1981 (*see* 46 FR 32896), the proposal to eliminate § 213.119 was also abandoned. In the November, 1982 revisions to the Track Safety Standards, § 213.119 was deleted.

In the Rail Safety Enforcement and Review Act of 1992, Congress mandated FRA to evaluate procedures for installing and maintaining CWR. In 1994, in the Federal Railroad Authorization Act, Congress added an evaluation of cold weather installation procedures to that mandate. In light of the evaluation of those procedures, as well as information resulting from FRA's own research and development, this final rule returns CWR procedures to Part 213.

CWR is naturally subjected to high compressive and tensile forces which, if not adequately restrained, can result in track buckling or pull-aparts. The potential for track buckling increases as the ambient air temperature increases while the potential for pull-aparts increases as the ambient air temperature decreases. Track buckling tends to occur under train movement and therefore can be instantaneous and somewhat unpredictable.

In recent years, FRA engaged in a research program to develop criteria and guidelines for improving CWR's resistance to buckling. The program sought to (1) define critical forces and conditions associated with track buckling, (2) quantify parameters which govern the resistance of track to buckling, and (3) develop technology to detect incipient failures prior to track buckling. Railroads have also invested considerable resources into CWR research and employee training which has resulted in a marked decrease in the number of reportable buckled track incidents over the last decade. FRA's Accident/Incident data base reveals that the number of reportable buckled track derailments has been reduced by approximately 50% since 1985, dropping from a yearly average of approximately 60 instances to approximately 30 such occurrences per year.

How a railroad provides the adequate lateral resistance to prevent track buckling may vary from railroad to railroad. The Track Working Group found that consistent methodology is not as important as effective methodology in installing and maintaining CWR. Therefore, the Track Working Group's recommendations and the new subsection (§ 213.119) are premised on the concept that the regulations should provide railroads with as much flexibility as safely feasible. The new subsection allows railroads to develop and implement their individual CWR programs based on procedures which have proven effective for them over the years. At a minimum, procedures shall be developed for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal requirements for recordkeeping. FRA fully expects the railroad industry to take advantage of continuing research initiatives to update and enhance their CWR procedures, and cautions railroads not to develop less than acceptable CWR procedures as a means to lessen the effect of regulatory oversight. FRA will monitor the railroads' adherence to these procedures as well as the overall effectiveness of the CWR programs.

While the CWR provision, as proposed, received support from some commenters (the NTSB), others were critical of the new provision. The AAR called it "a classic case of overregulation" and suggested that the provision require track owners only to have CWR procedures and training programs in effect and accessible to FRA. While it supported the provision as a means to enhance track safety, the BMWE also advised that the provision lacks a means to address railroads' non-compliance with their own CWR programs. The ASLRA suggested that railroads should have the option of excluding from their CWR plans any trackage over which trains do not operate at speeds over 30 m.p.h. and which do not exceed one million gross ton miles in traffic annually. The AAR also stated that it generally supports the provision as drafted by the Track Working Group and that its suggestions for changes were to be considered only in the event FRA decides to revise the proposed provision in response to recommendations of other RSAC participants who, after helping to draft the recommended NPRM, withdrew support for the recommendation. All three commenters who expressed negative comments were active participants in the Track Working Group and helped to draft the language which adds the provision for CWR in this final rule.

Excepted Track

With some limitations, the excepted track regulation permits railroads to designate track as "excepted" from compliance with minimum safety requirements for roadbed, track geometry and track structure. FRA added the excepted track provision (§ 213.4) to the regulations in 1982 in response to an industry outcry for regulatory relief on those rail lines producing little or no income. FRA believed that without some relief for low density lines, railroads would accelerate abandonment of those lines rather than invest their slim resources where returns would be limited.

Therefore, the 1982 revision provided the industry with a means to operate over designated tracks without complying with the substantive requirements of the Track Safety Standards. FRA believed that the designated tracks would be located in yards or otherwise on comparatively level terrain in areas where the likelihood was remote that a derailment would endanger a train crew or the general public.

The 1982 provision contains a number of operating restrictions, including limitations on where excepted track can be located and the number of cars containing hazardous materials (five) that can be hauled in one train. Maximum speed is 10 m.p.h., and passenger service is prohibited.

Despite these limitations, railroads have embraced the concept of excepted track. In 1992, an FRA survey revealed the existence of approximately 12,000 miles of designated excepted track nationwide, far more than FRA envisioned when the provision was added to the regulations. Recent surveys conducted by the AAR and the ASLRA indicate that between 8,000 and 9,000 miles of excepted track presently exist nationwide.

Comments to the ANPRM, the NPRM, as well as some opinions expressed within the Track Working Group, showed that many railroads favor maintaining an excepted track provision in the Track Safety Standards. They argued that accident and injury data do not support the notion that trackage in "excepted" status presents any significant safety hazard. FRA's data show that between 1990 and 1995, track-caused derailments on excepted track caused three reportable injuries and one release of hazardous materials. In commenting on the NPRM, the ASLRA stated that, in a recent survey of short line railroads, 146 railroads that reported having excepted track had 122 reportable accidents in a five-year period from 1991 through 1995. Of those accidents, 87 were track-related.

The ASLRA strenuously argued that short line railroads depend on the excepted track provision in order to keep certain track segments in business. Many short lines operate over track they acquired just before abandonment by a major railroad. A significant number of those lines serve only a handful of industries with comparatively small gross tonnage. The ASLRA commented that the cost to short line railroads to upgrade and maintain excepted track would exceed $230 million. Elimination of the excepted track provision would cause the abandonment of approximately 95 lines affecting 1,063 shippers who may be then compelled to use highway transportation.

Approximately 65% of all reportable derailments on excepted track from 1988 through the third quarter of 1995 were track-caused. Of those, nearly 33% were attributed to wide gage as a result of defective crossties or rail fasteners. Several commenters expressed approval of some type of gage restriction. The BMWE suggested that the revised provision should also address the condition and placement of ties and fasteners, as well as switch maintenance and rail/joint bar defects.

The AAR commented that the gage restrictions proposed in the NPRM should be eliminated. The AAR stated that there are situations where wide gage is safe, for instance, in road crossings. In those cases, pavement would have to be destroyed and replaced to correct wide gage when the pavement would have restricted wheel position and prevented a derailment. The AAR also stated that it recommends that the gage restriction be eliminated only if FRA decides to revise the proposed provision based on the comments of other RSAC participants who helped draft the recommendations and then later withdrew support of them. Otherwise, the AAR supports the NPRM as drafted by the Track Working Group.

Because none of the commenters presented FRA with a compelling reason to make further changes to the gage restrictions in the excepted track provision, this final rule adopts the language as recommended by the Track Working Group and as proposed in the NPRM. Under this final rule, track owners must maintain gage to a 58¼" standard and perform periodic switch inspections.

FRA and state inspectors have found instances where railroads have taken advantage of the permissive language in the 1982 provision to conduct operations in a manner not envisioned when FRA drafted the provision. For example, a railroad removes a segment of track from the excepted designation only long enough to move a train with more than five cars carrying hazardous materials, or to operate an excursion passenger train, and then replaces the segment in excepted status as soon as the movement is completed. The BMWE and the NTSB suggested that the revised provision include time limits for the use of this provision over any segment of track. The final rule adopts the language as proposed in the NPRM and requires railroads to provide FRA with notification 10 days prior to removing track from excepted status.

The revision also changes the word "revenue" to "occupied" in describing passenger trains prohibited from operating over excepted track. This change codifies FRA's long-standing interpretation of the 1982 provision which allowed trains on excepted track to be occupied by crews, work gangs, and other railroad employees attending to their job-related duties. It is also designed to dispel the misconception by some railroads that passengers could be hauled over excepted track as long as they were not charged, and the railroad received no "revenue," for their transportation. The purpose of the passenger prohibition is to safeguard railroad passengers; its purpose is not concerned with the revenue-generating power of passenger service.

Liability Standard

The current track regulations are enforced against a track owner "who knows or has notice" that the track does not meet compliance standards. This knowledge standard is unique to the track regulations; other FRA regulations are based on strict liability. The knowledge standard is founded on the notion that railroads cannot prevent the occurrence of some defects in track structures that are continually changing in response to the loads imposed on them by traffic and effects of weather. Many defects may not be detected even when the track owner exercises reasonable care. Therefore, track owners should be held responsible only for those defects about which they know or should know. Today, even after years of track abandonments by major railroads, the industry is responsible for maintaining about 200,000 miles of track. Many defects occur suddenly in remote areas, making it difficult for even the most diligent track inspectors to keep pace with all defects as they happen.

With a knowledge standard attached to the track regulations, railroads are held liable for non-compliance or civil penalties for only those defects that they knew about or those that are so evident the railroad is deemed to have known about them. FRA and state inspectors meet this knowledge standard in a number of ways. Sometimes they record and notify a railroad of a defect that they find, and then re-inspect later to see if the defect has been repaired. If it has not, they may cite the railroad for a violation of the track safety standards. While this method provides a failsafe way of proving railroad notice of a defect, it is not always practicable for inspectors to perform follow-up inspections. Such a system would make railroads responsible only for defects

FRA already has detected, which is clearly not a sufficient incentive to comply.

Often, inspectors choose to inspect the railroad's own inspection records to see if a defect they have noted is recorded there. If it is, the inspection record forms proof that the railroad had notice of the defect. If the defect is not recorded in the railroad's inspection records, but is of the nature that it would have had to exist at the time of the railroad's last inspection (for example, defective crossties or certain breaks that are covered with rust) and would have been detected with the exercise of reasonable care, the defect's existence constitutes constructive knowledge by the railroad and the railroad is cited for a violation. FRA's reading of its "knows or has notice" standard has been its long-standing enforcement policy and is explained in FRA's Track Enforcement Manual.

In its petition, the BMWE suggested that FRA put track owners under a strict liability standard by removing the phrase "knows or has notice" from § 213.5. Under that standard, any defect found by an FRA inspector could be written as a violation regardless of the railroad's ignorance of it or the railroad's opportunity to have detected it under the required inspection schedule. The AAR requested in its petition that FRA develop performance standards for the track regulations. Certain defects would not be cited as long as the track is performing safely, making unnecessary many of the regulations (for example, inspection requirements and the minimum number of crossties). The inherent weakness in such a proposal is that railroads will develop differing internal requirements for track inspection and maintenance. Some railroads may not be as vigilant as others in spotting defects or potential defects. Track defects compromising safety may not be discovered until the track fails, causing a derailment and possibly injuries and death.

Neither the BMWE nor the AAR provided FRA with cost/benefit information to support their respective requests.

The Track Working Group considered and rejected both proposals, finding that the existing language, as it has been enforced to date, strikes the best balance of all interests. Therefore, the NPRM proposed to leave the standard of liability unchanged. In its comments on the NPRM, the BMWE again proposed that the standard of liability be changed to that of strict liability. According to the BMWE, the current language encourages railroads to under-report track defects and offers the railroads no disincentive from assigning railroad track inspectors "overly-expansive inspection territories" resulting in less thorough and comprehensive track inspections.

In preparing this final rule, FRA weighed the BMWE comments, as well as its own enforcement experience, against the consensus-based recommendation of the Track Working Group which representatives of the railroads, FRA, and labor developed. FRA has concluded that the Track Working Group struck the right balance, and thus in this final rule, railroads will continue to be held liable for track defects of which they knew or had notice. Even if a railroad has not recorded those defects, notice may include constructive knowledge of defects that, by their nature, would have had to be in existence when the railroad was last required to perform an inspection.

Moreover, the penalty provision now makes clear what has been the law for many years, *i.e.*, that anyone who makes a false report under the safety laws is liable for criminal penalties under 49 U.S.C. 21311. This should provide an additional deterrent to anyone who would purposely under-report defects.

Tourist Railroads

The Track Safety Standards apply to only those tourist railroads that operate on the general system. FRA estimates that approximately 95 tourist railroads operating over 1,350 miles of standard gage track off the general system are not currently subject to the track safety standards. The agency sees the need to address this growing market and increasing safety exposure in the area of track safety, as well as other areas of rail operation.

In April, 1996, FRA referred tourist railroad safety issues to the RSAC. The RSAC, in turn, established a working group comprised of agency and tourist railroad industry representatives to analyze the industry's unique aspects and formulate recommendations for appropriate regulation of that specialized industry. Among the issues the working group will examine is track safety. The findings of that group may or may not lead to a recommendation by the RSAC that the Track Safety Standards should be revised to apply to all tourist railroads. However, if such a recommendation is the result, FRA may then consider initiating a separate rulemaking to address that issue. The NTSB took the opportunity of this proceeding to express its opinion that the Track Safety Standards should apply to tourist railroads both on and off the general system. Because many issues affecting tourist railroads are still under consideration by FRA, this final rule includes no changes to the Track Safety Standards that are directed specifically to those railroads.

Gage Restraint Measurement System

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fasteners. However, the inability of the track structure to maintain gage sometimes becomes apparent only after a derailment occurs. Many railroads throughout the country have successfully tested the GRMS, which was developed under a joint FRA/industry research project.

Accident statistics taken from FRA's Annual Accident/Incident Bulletins reveal that from 1985 through 1995, reportable wide gage derailments from defective crossties and fasteners totaled 2,232 instances and cost the industry over 60 million dollars in damages.

Current crosstie and fastener maintenance techniques rely heavily on visual inspections by track inspectors, whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of those inspections sometimes creates inconsistent determinations about the ability of individual crossties and fasteners to restrain track gage. Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, a crosstie of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or fasteners, the static or unloaded gage is within the limits prescribed by the current track standards. However, when a train applies an abnormally high lateral load to a section of track that contains marginal crosstie or fastener conditions, the result is often a wide gage derailment.

In 1993, FRA granted CSX Transportation a waiver of compliance for the purpose of conducting a test program to evaluate the GRMS performance-based standard using FRA's research vehicle, in lieu of existing crosstie and rail fastening requirements, on nearly 500 miles of various track segments. The experience gained under this waiver has provided FRA with the opportunity to continually make adjustments to the conditional

requirements of the waiver to the point where the technology has proven itself to be a more consistent method of objectively determining crosstie and fastener effectiveness. FRA believes the technology is now ready to be deployed within the industry.

The Track Working Group could not reach consensus about how the revised Track Safety Standards should address GRMS technology. The RSAC therefore recommended that a small task group continue evaluating the possibility of developing GRMS standards for broader application within the industry. Nevertheless, some parties submitted comments to the NPRM concerning the use of GRMS. The NTSB recommended that the revised standards incorporate the use of advanced track inspection technologies, such as track geometry cars, GRMS, light-weight loading fixtures, and state-of-the-art rail inspection methods for internal rail defects. In its comments to the NPRM, the BMWE reiterated its position that GRMS technology be used in conjunction with current inspection requirements. The AAR, in its comments, repeated its position that the revised Track Safety Standards should allow alternate inspection procedures that would permit railroads to use some combination of geometry cars, measurement equipment and instrumentation such as GRMS, hyrail inspections, and other means of inspecting in place of the required visual inspections. At the publication of this final rule, the task group continues to work to reconcile the differences and reach a consensus on what type of GRMS provision would be most effective. FRA, for its part, is still examining the points made for and against incorporation of a GRMS provision and is not prepared to resolve the issue at this time. However, FRA anticipates coming to resolution in the near future. All of the relevant issues appear to have been identified and discussed in this proceeding.

High Speed Rail Standards

The current Track Safety Standards include six classes of track that permit passenger and freight trains to travel up to 110 m.p.h. Passenger trains have been allowed to operate at speeds over 125 m.p.h under conditional waiver granted by FRA. This final rule adds three new classes of track that designate standards for track over which trains may travel at speeds up to 200 m.p.h. Standards for high speed track classes will be contained in a new Subpart G of Part 213 which will cover track Classes 6 through 9. The new subpart is intended to function as "stand alone" regulations governing any track identified as belonging to one of these higher classes. In other words, the track owner needs to refer only to Subpart G for compliance with the Track Safety Standards for track over which railroads operate trains at the speeds associated with the high speed track classes. However, if that same track does not meet the standards in Subpart G at any time, the other subparts (A through F) apply.

These track standards constitute only one of several components comprising a regulatory program permitting trains to travel at high speeds. FRA also may address high speed issues in regulations outside of Part 213, such as emergency preparedness, wheel conditions, braking systems, and grade crossings. These track standards are an integral part of that larger regulatory scheme.

FRA's approach to track safety standards for high speeds is based on the fundamental principle that vehicles in the high speed regime must demonstrate that they will not exceed minimum vehicle/track performance safety limits when operating on specified track. In addition, railroads must monitor the vehicle/track system to ensure that the safety limits will be met under traffic conditions.

A panel of experts in high speed rail transportation worked with the Track Safety Working Group to provide recommendations for vehicle/track performance limits and track geometry. The panel identified acceleration and wheel/rail force safety criteria by reviewing technical studies, considering foreign experience and practices, and performing independent computer simulation and analytical studies. Once it identified vehicle/track performance limits, the panel developed specific geometry safety criteria. The panel also recommended requirements necessary for track structure to sustain the forces generated by vehicles at high speeds.

In developing this final rule, FRA sought out the best available technical data about dynamic performance of vehicle/track systems to devise safety standards that are practical to implement. The high speed standards in this notice provide for the qualification of vehicles; geometry standards for gage, surface, and alinement; track structure; and inspection requirements for both automated and visual inspections. While some of the sections in the new Subpart G are identical, or nearly identical, to their counterparts in other sections of the regulation, the standards for high speed operations generally differ markedly from those for the lower track classes which cover a much broader range of railroad vehicles. Several sections have no counterpart in the standards for the lower classes of track because they address issues unique to the high speed environment. Other sections are simply modifications of the requirements for the lower track classes.

Comments to the new Subpart G proposed in the NPRM came from Amtrak, the NTSB, Bombardier GEC Alsthom Consortium, Union Switch and Signal, and the Director of Ground Transportation of the French Ministere de l'Equipment des Transports et du Logement. The commenters were generally supportive of the new standards, but they offered suggestions for modifying some sections in the subpart. Their specific comments are addressed in this notice under segment designated as "Section by Section Analysis."

A representative for the Florida Overland eXpress responded to the NPRM with a request that FRA remove from the final rule reference to Florida Overland eXpress's plans to operate trains at very high speeds. Florida Overland eXpress petitioned FRA in 1996 for a Rule of Particular Applicability for its proposed operation. Such a rule would include a variety of railroad safety regulations, including track safety regulations, that would apply only to the Florida Overland eXpress. FRA issued a Notice of Rule of Particular Applicability, published on December 12, 1997. *See* 62 FR 65478. Florida Overland eXpress objected to a reference to that operation in the NPRM because this rule of general applicability will not apply to its operation. FRA agrees that the reference in the NPRM to the Florida Overland eXpress, without explanation of its unique circumstances, may mislead others into believing that this rule will apply to that operation. It will not.

Following the closure of the comment period for the NPRM (September 15, 1997), the Volpe National Transportation Systems Center (VNTSC) issued a working paper entitled "Evaluation of Proposed High Speed Track Surface Geometry Specification," dated December 1, 1997. The working paper evaluated the response of different high speed locomotive designs to track profile geometry variations. Because the VNTSC working paper contained relevant and useful information for this final rule but was not available at the time of the publication of the NPRM, FRA placed the paper in the docket for this proceeding and issued a special notice on December 12, 1997, inviting public comment on its content. *See* 62 FR 65401. The comment period for the

VNTSC working paper expired on December 22, 1997. FRA received only one response to the special notice. The AAR noted that it would not be able to provide comment on the VNTSC working paper without knowing how FRA would use the report to set the geometry standards for the high speed classes of track.

Torch Cut Rails

Torch cutting rail, a practice that was widespread in the railroad industry until a few years ago, is now used by most railroads only for emergency repairs in Classes 3 through 5 track. Technology has advanced to the point where cutting rail with the various types of rail saws that are readily available is more efficient than torch cutting. FRA lacks reliable data on the number of existing torch cuts. The railroads report that torch cuts no longer exist on Class 6 track, and the torch cuts remaining in Class 5 track nationwide probably number "in the hundreds." Nevertheless, torch cuts from years ago when the practice was more prevalent still exist and are believed to pose a safety hazard.

In 1983, following its investigation of an Amtrak derailment in Texas, the NTSB recommended that torch cuts be removed and that trains move at only 10 m.p.h. over torch cuts made in emergency situations or as a preparatory step in field welding. It should be noted, however, that the rail involved in the Texas accident had a type of high alloy content which the industry now recognizes as inferior. It is no longer used in the industry.

Because rails that have been torch-cut have a greater tendency to develop fractures in the short term, the NPRM proposed that the practice of torch-cutting rails in Classes 3 through 5 track should be prohibited in the future except for emergency temporary repairs. The NPRM further proposed that existing torch cuts in Class 3 track over which regularly scheduled passenger trains operate should be inventoried and any torch cuts that are found later but are not listed on the inventory must be removed. Torch cuts in Class 4 track must be removed within two years of the effective date of this final rule, and torch cuts in Class 5 track must be removed within one year. Because torch cuts existing on yard tracks and main tracks where trains operate at slow speeds (Classes 1 and 2) do not pose as high a risk, the NPRM proposed that existing torch cuts in Classes 1 and 2 track be allowed to remain.

In commenting on the NPRM, the NTSB suggested that torch cuts should be prohibited and eliminated from all track in classes above Class 1, and movement over torch cuts should be restricted to 10 m.p.h. The BMWE commented that torch cutting should be prohibited in all classes above Class 2, and that existing torch cuts in Class 2 track should be removed within a reasonable time. The AAR commented that the torch cut provision should simply prohibit torch cutting in Classes 3 through 5 track. However, the AAR further stated that it generally supports the NPRM and offered this suggestion to be considered only in the event FRA decides to change the proposed provision in accordance with the comments of other RSAC participants who helped draft the provision and then later withdrew support of the RSAC recommendations.

This final rule adopts the proposed rule as drafted by the Track Working Group, approved by majority consensus of the RSAC, and proposed in the NPRM. The comment by the NTSB, that torch cuts should be removed from any track class above Class 1, is based upon the NTSB's investigation of the 1983 Amtrak derailment in Texas. However, FRA's analysis of the derailment indicates that the high alloy content of the rail at the site of the accident played a larger part in causing the derailment than did the torch cut. Therefore, FRA is not persuaded by the NTSB's analysis. The BMWE offered no clear explanation of its proposal to prohibit all torch cuts in track classes above Class 2. Similarly, FRA was not persuaded by AAR's argument that accident statistics fail to support a torch cut regulation that requires anything more than a prohibition against any future torch cutting in track classes above Class 3. FRA believes that existing torch cuts in the higher classes of track may pose a danger of derailment.

Other Issues

Plant Railroads and Industrial Spurs

In general, FRA has elected not to exercise jurisdiction over the safety of railroads that conduct their operations exclusively within an industrial or military installation. FRA chose this self-imposed limitation because such operations have not demonstrated the same degree and frequency of track problems found on tracks in the general system which are subject to heavier tonnages and more frequent use. Nevertheless, FRA recognizes its responsibility for the safety of railroad employees and operations inside such facilities where a general system railroad provides service on that property, either by picking up and placing cars for transportation in interstate commerce or by switching for the plant. The same responsibility applies to operations on privately owned industrial spurs used exclusively by a main line railroad to serve an industry.

The applicability section of the current Track Safety Standards (§ 213.3) excludes track "located inside an installation which is not part of the general railroad system of transportation." This broad statement implies that the track standards do not apply anywhere inside a plant, regardless of who operates there or the type of operations that occur on the plant track. However, § 213.3 must be read in conjunction with 49 C.F.R. Part 209, Appendix A, which explains that the track owner of any plant railroad trackage over which a general system railroad operates is responsible for the condition of track used by the general system railroad. With the entrance of a general system railroad, the plant does not become part of the general system, but it does lose some of its insularity as to that part of the track used by the general system railroad.

Since the enactment of the Federal Railroad Safety Act of 1970, FRA has had at its disposal statutory authority to issue emergency orders to repair or discontinue use of industrial or plant trackage should the agency find that conditions of the track pose a hazard of death or injury. *See* 49 U.S.C. § 20901. It is FRA's opinion that this emergency order authority is sufficient power to ensure track safety within plants, as well as other installations (*e.g.*, military installations). However, if conditions or events in the future tend to demonstrate that track safety within plants or installations should be more specifically regulated, FRA will seek to change the applicability of this Part in a future rulemaking. This final rule leaves the application section of the Track Safety Standards unchanged.

Train Speed/Preemption

Under the current Track Safety Standards, FRA has only an indirect role in determining speed limits. Railroads set train speed in their timetables or train orders. Once a railroad sets a train speed, it must then maintain the track according to FRA standards for the class of track that corresponds to that train speed. The signal and train control regulations also fix limits on train speed based upon the type of signal system that is in place. If the railroad fails to comply with track or signal system requirements for speed at which trains are operated, the railroad is subject to penalty.

FRA's current regulations governing train speed do not afford any adjustment of train speeds in urban settings or at grade crossings. This omission is intentional. FRA believes that locally established speed limits may result in hundreds of individual speed restrictions along a train's route, increasing safety hazards and causing train delays. The safest train maintains a steady speed. Every time a train must slow down and then speed up, safety hazards, such as buff and draft forces, are introduced. These kinds of forces can enhance the chance of derailment with its attendant risk of injury to employees, the traveling public, and surrounding communities.

FRA always has contended that Federal regulations preempt any local speed restrictions on trains. Section 20106 of Title 49, United States Code (formerly 45 U.S.C. § 434) declares that—

> [l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—(1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonable burden interstate commerce.

FRA's long-held belief that Part 213 preempts local speed laws was verified by the U.S. Supreme Court in 1993 in the case *CSX* v. *Easterwood*, 507 U.S. 658 (1993). The Court held that legal duties imposed on railroads by a state's common law of negligence fall within the scope of preemption provision of 49 U.S.C. 20106, which preempts any state "law, rule, regulation, order or standard relating to railroad safety." The Court said that preemption of such state laws "will lie only if the federal regulations substantially subsume the subject matter of the relevant state law." *Easterwood*, 664. However, the Court further stated that because Part 213 ties certain track requirements to train speed, it should be viewed as "covering the subject matter" of speed limits.

Notwithstanding some of the language in *Easterwood* that a cursory reading may otherwise indicate, FRA has never assumed the task of setting train speed. Rather, the agency holds railroads responsible for minimizing the risk of derailment by properly maintaining track for the speed they set themselves. For example, if a railroad wants its freight trains to operate at 59 m.p.h. between two certain locations, it must maintain the tracks between those locations to Class 4 standards.

Moreover, there are significant safety reasons for facilitating the fastest transit of trains throughout the railroad system. For example, the risk of releases of hazardous materials is reduced by minimizing the time such shipments spend in transportation. It would be poor public policy to allow local governments to attempt to lower their risk by raising everyone's risk and by clogging the transportation system. Railroads have strong economic motives to minimize the time shipments spend in transportation, so public safety and employee safety are best served by setting and enforcing the standards railroads must meet to travel at particular speeds.

In recent years, FRA has encountered increasing pressure from communities along railroad rights-of-way to set slower train speeds on main tracks located in urban areas. They typically cite the inherent dangers of grade crossings, pedestrian safety, as well as the risk of derailments of rail cars containing hazardous materials.

As to grade crossings, FRA has consistently maintained that their danger is a separate issue from train speed. The physical properties of a moving train virtually always prevent it from stopping in time to avoid hitting an object on the tracks regardless of the speed at which the train is traveling. Prevention of grade crossing accidents is more effectively achieved through the use of adequate crossing warning systems and through observance by the traveling public of crossing restrictions and precautions. Therefore, FRA continues to sponsor and/or support initiatives to improve safety at grade crossings under the Department of Transportation's Grade Crossing Action Plan. These initiatives are geared towards enhancing enforcement of traffic laws at crossings, closing unneeded crossings, enhancing rail corridor crossing reviews and improvements, expanding public education and Operation Lifesaver activities, increasing safety at private crossings, improving data and research efforts, and preventing rail trespassing.

In January, 1995, FRA implemented regulations for maintenance, inspection and testing of warning devices at crossings, such as lights and gates. *See* 59 FR 50086. The agency also implemented regulations requiring certain locomotives to be equipped with auxiliary lights making trains more visible to motorists, railroad employees, and pedestrians. *See* 61 FR 8881. FRA believes that these measures are more effective approaches to enhancing safety at grade crossings than an attempt to design speed limits for each geographic situation.

FRA received no comments on this issue following a similar discussion of the issue in the NPRM.

Vegetation

The vegetation control requirements of Part 213 currently deal with fire hazards to bridges, visibility of railroad signs and signals, interference with normal trackside duties of employees, proper functioning of signal and communication lines, and the ability to inspect moving equipment ("roll by" inspections). The regulation does not address the issues of motorists' and pedestrians' ability to see warning devices at highway-rail crossings.

Since 1978, accidents and fatalities at highway-rail grade crossings have decreased dramatically due to engineering improvements at individual crossings, education of the public, and greater enforcement of highway traffic laws. Nevertheless, FRA finds that the present loss of life, injuries, and property damage are still unacceptable. Projections for 1997 based upon nine months of preliminary data show that 441 people were killed, and 1,525 suffered serious injuries in grade crossing accidents. Second only to trespasser fatalities as a leading cause of death in the railroad industry, highway-rail collisions far out-number fatalities to railroad employees and passengers.

In lengthy discussions about vegetation at grade crossings, the Track Working Group quickly realized that the issue requires the expertise of entities not represented on the Track Working Group or RSAC, *e.g.*, state and federal highway designers, traffic engineers, as well as representatives of local jurisdictions with grade crossings. The NPRM generated no comments concerning the issue of vegetation at grade crossings. FRA agrees with the assessment reached by the Track Working Group that the issue requires the judgment of experts in other transportation arenas. Therefore, this final rule adds only one requirement for railroads in maintaining vegetation. Under this rule, railroads are required to clear vegetation away from signs and signals on railroad rights-of-way at grade crossings. The additional language is intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility of railroad signs and signals to the traveling public. It is not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings, nor is it

intended to dictate standards for surrounding landowners.

Because concern about this issue remains, the FRA Administrator has recommended that the Department of Transportation initiate a joint regulatory proceeding by FRA and the Federal Highway Administration to address vegetation maintenance and sight distances for motorists at grade crossings. Should the Department of Transportation decide not to initiate such a regulatory project, FRA will then consider the next appropriate action which may include launching its own regulatory proceeding.

Metric System

In the 1992 ANPRM, FRA requested comments in response to a proposal to create a dual system of measurements, English and metric, for inclusion in these regulations. Responses were varied. Some commenters suggested that FRA implement metric standards, while others recommended that a dual system would be better. Still others argued that the addition of metric standards, whether as a single standard or in a dual system with English standards, would cause confusion in the industry. They added that computerized recordkeeping would have to be re-programmed at a significant expense.

The RSAC did not recommend the addition of metric standards in this proceeding. Although the issue was raised in the NPRM, it generated no comments. FRA concludes that the introduction of metric values into the regulations is not appropriate at this time.

Section by Section Analysis—Track Classes 1–5

The Federal Track Safety Standards, until now, included only six classes of track representing speeds up to 110 m.p.h. The regulations applied to all of the classes. This final rule separates the classes of track into two general categories: Classes 1 through 5 for speeds up to 90 m.p.h. (80 m.p.h. for freight) and Classes 6 through 9 for speeds above 90 m.p.h. (80 m.p.h. for freight). Subparts A through F apply to Classes 1 through 5, as they always have. However, the new Subpart G applies exclusively to Classes 6 through 9. This separation of the classes of track is designed for better ease of use. Owners of track over which high speed trains operate need to refer only to Subpart G for almost all of the relevant regulations. (The exceptions are § 213.2, Preemptive effect; § 213.3, Application; and § 213.15, Penalties.) On the other hand, track owners over which train speeds do not exceed 90 m.p.h. continue to refer to Subparts A through .

Class 6 is included in the category for high speed track, governed by Subpart G, because the safety issues associated with that class of track more closely resemble those associated with the higher classes.

Section 213.1—Scope of the Part

Proposed rule: An amendment to this section would eliminate the word "initial." When the Track Safety Standards were first published in 1971, they were referred to as "initial safety standards" because they were the first Federal standards addressing track safety. Twenty-five years and several amendments later, the current Track Safety Standards are no longer initial standards. Therefore this amendment eliminates a mischaracterization of the standards by removing the outdated descriptive "initial."

Comments: Comments received supported the proposed amendment.

Final rule: The section incorporates the change as proposed in the NPRM and adds a sentence to distinguish the applicability of Subpart G from the applicability of Subparts A through F. Subpart G applies to track over which trains are operated at speeds in excess of those permitted over Class 5 track, a maximum of 80 m.p.h. for freight trains and 90 m.p.h. for passenger trains. Subpart G is designed to be mostly comprehensive, so that a railroad operating at speeds above Class 5 maximum speeds may refer to Subpart G for all of the substantive track safety requirements for high speed rail. Such a railroad needs to refer to the earlier sections of the Track Safety Standards only for the general provisions at § 213.2 (preemptive effect), § 213.3 (application), and § 213.1 (Penalties). On the other hand, railroads which never operate at speeds in excess of the maximum Class 5 speeds need not refer to Subpart G at all.

The final rule also adds language to this section to state that railroads are not restricted from adopting and enforcing more stringent track safety requirements as long as they are not inconsistent with the track safety standards in this Part. This statement is consistent with the earlier statement that these regulations are minimum requirements.

Section 213.2—Preemptive Effect

Proposed rule: This section is added to Part 213 to indicate that states cannot adopt or continue in force laws related to the subject matter covered in this rule, unless such laws are needed to address a local safety hazard and they impose no undue burden on interstate commerce. This section is consistent with the mandate of 49 U.S.C. 20106, formerly § 205 of the Federal Railroad Safety Act of 1970. Although the courts ultimately determine preemption in any particular factual context, this section provides a statement of agency intent and promotes national uniformity of regulation in accordance with the statute.

Comments: Comments received supported the proposed amendment.

Final rule: The section is modified slightly so that the language more closely corresponds to the language of the statute. *See* 49 U.S.C. 20106.

Section 213.3—Application

Proposed rule: This section was not proposed to be amended. The Track Working Group discussed amending subsection (b) to reference Appendix A of Part 209 in an effort to clarify FRA's safety policy toward trackage used by general system railroads within the confines of installations. According to Appendix A of Part 209, a plant does not become a general system railroad, subject to all of the attendant safety requirements applied to such railroads, simply because a general system railroad operates over a portion of the plant trackage. Nevertheless, a plant owner is held liable for the condition of any plant trackage over which a general system railroad operates. Under this policy, FRA will not hold plant owners responsible for compliance with ancillary track safety provisions, such as the requirements for recordkeeping or inspection frequencies. However, FRA will judge the safety of the plant railroad against the substantive safety requirements in those standards to assess the need to invoke its emergency order authority against the plant owner.

The Track Working Group advised that a reference in Part 213 to Appendix A of Part 209, which is merely a statement of FRA policy, could have the effect of making all provisions of Part 213, including those ancillary provisions, enforceable against thousands of plant owners, at least to the extent general system railroads operate within plant borders. Such a result would be more far-reaching than intended by the RSAC.

Comments: One commenter suggested that the application of Part 213 be extended to cover standard gage tourist railroads which operate off the general system and meet the FRA's test for insularity. This commenter also suggested that the agency consider developing track safety standards for non-standard gage tourist railroad operations.

Final rule: This section is amended to conform the discussion of jurisdiction over rapid transit service to the statute. See 49 U.S.C. 20102. The statute has been amended since part 213 was issued, but § 213.3(b)(2) was never amended to conform to the statute. The Track Safety Standards will still exclude urban area rapid transit systems that are unconnected to the general system. This change is not intended make the Track Safety Standards applicable to rapid transit whose only connection to the general system is a switch permitting receipt of shipments from the general system.

In response to concerns expressed by and about tourist railroads, FRA proffered, and the RSAC accepted, a task to study tourist railroad concerns. The RSAC has established a working group to perform the task. It is comprised of agency and tourist railroad industry representatives who are analyzing the industry's unique aspects and formulating recommendations for appropriate regulation of that specialized industry. Therefore, the NPRM proposed no changes in that regard.

While FRA does not think a reference to Appendix A to Part 209 would have the effect feared by the Track Working Group, FRA declines to exercise its jurisdiction over plant railroads at this time because the safety issues now presented on their track do not warrant the allocation of agency resources that would be diverted from matters presenting greater safety risks. The agency continues to have safety jurisdiction over those railroads and may invoke its statutory emergency authority if it deems that necessary in order to safeguard anyone from the hazard of death or personal injury.

Section 213.4—Excepted Track

Proposed rule: The NPRM proposed to maintain the provision for excepted track with added restrictions for its use and maintenance. Since its inception in 1982, the excepted track category has become an economic issue for some small railroads, particularly short line railroads and low volume shippers. It allows railroads to continue to use, on a limited basis, low-density trackage that does not earn sufficient revenue to justify the expense of maintaining it to higher track standards. It allows short lines to acquire and use trackage that may have been abandoned by larger railroads, thereby preserving rail service to shippers and avoiding the necessity of shifting traffic over those lines from moving to some other, perhaps more hazardous, means of transport.

Because the majority of reportable derailments on excepted track are track-caused, and the majority of this total are wide gage-related, the NPRM proposed to institute a requirement that gage must not exceed of 58¼" on excepted track. This requirement would apply to the actual gage measurement itself, and would not extend to the evaluation of crossties and fasteners which provide the gage restraint. A clarification was added to the inspection requirements on excepted track which specifically reference turnout inspections required under this section.

The NPRM also proposed to include a requirement that railroads notify FRA at least 10 days before removing trackage from excepted status. This provision is intended to prevent the practice FRA has witnessed in the past by some railroads who remove trackage from excepted status only long enough to move a passenger excursion train or a train with more than five cars containing hazardous materials. Furthermore, the NPRM included an edit to § 213.4(e)(2) changing the word "revenue" to "occupied" in describing passenger trains prohibited from operating over excepted track. This change addresses a misconception by some railroads that they could operate passenger excursion trains over excepted track as long as they did not charge passengers admission for a ride. The proposed change clarifies that the prohibition is directed toward all passengers but is not meant to include train crew members, track maintenance crews, and other railroad employees who must travel over the track to attend to their work duties.

Comments: Comments received generally supported the proposed amendments to the excepted track regulation. However, several commenters proposed that additional requirements and restrictions should be incorporated into the regulation. Proposals included a total prohibition of hazardous materials shipments, additional restrictions on where excepted track could be utilized, additional minimum safety standards, and a time limit for length of time a track could remain in excepted status.

Final rule: In preparing its recommended proposed rule, the Track Working Group discussed at length the same requirements and restrictions suggested for inclusion into this final rule by commenters. The final rule includes additional regulatory control over abuses of the excepted track provision which have been documented in the past. The final rule also prescribes a minimum safety standard for gage that addresses the major causal factor associated with track-caused derailments on excepted track.

FRA rejected the suggestion that the provision should include a prohibition of all hazardous material shipments. Many small short line railroads who operate over excepted track haul hazardous materials on a regular basis. A general prohibition would cause many of these railroads to close operation, and the hazardous materials would be hauled by trucks over public highways. Similarly, a restriction on the length of time track may remain in excepted status, and a restriction on where excepted track could be utilized, would place an undue burden on many short line railroads who operate exclusively on excepted track. Statistics show that 87 track-caused reportable accidents occurred on 8,000 to 9,000 miles of excepted track in five years. These numbers, in FRA's judgment, do not justify implementing restrictions over-burdensome to small railroads.

FRA considered implementing minimum safety standards, in addition to the new gage and switch requirements. However, the ASLRA estimated that the cost to short line railroads to improve excepted track to Class 1 standards would cost the short line industry some $230 million. FRA believes that this final rule provides needed additional measures of safety for excepted track while maintaining the regulatory relief the excepted track provision provides, but under more restrictive conditional and operational requirements.

Section 213.5—Responsibility of Track Owners

Proposed rule: The NPRM proposed to change subsections (c) and (d) to modify the way in which track owners may assign compliance responsibility to another entity. Under the current regulations, a track owner may petition the Federal Railroad Administrator to recognize another party as the one primarily responsible for the maintenance and inspection of the owner's track. This provision is intended to facilitate compliance by track owners whose track is leased to another entity for operation. Often track owners (*e.g.*, municipal communities, county governments) do not have the necessary expertise to maintain compliance with Federal track standards, but their track lessees do. Thus, track owners can successfully petition FRA for reassignment of primary responsibility by providing certain information about the assigned party and the relationship of the assigned party to the track owner. When such a petition is approved by FRA, the

assigned party becomes responsible, along with the track owner, for compliance with Part 213.

The change for these subsections eliminates the approval process by FRA, shown in years past to be the cause of unnecessary paperwork. Records show that FRA has approved almost every such petition it has reviewed. Under the subsection proposed in the NPRM, a track owner could reassign responsibility to another entity simply by notifying FRA's regional administrator for the FRA region in which the track is located. The notification would include the same information required for the petitions under the current standards. However, FRA would discontinue its practice of publishing in the **Federal Register** the petitions for reassignment, along with requests for public comment. The reassignments would no longer be reviewed by FRA's Railroad Safety Board.

FRA believes that the change would not diminish track safety. Although the intent of the original subsection was to give FRA some control over who should be responsible for maintaining track, the practical application of the subsection has shown that such control by the agency is unnecessary. Rather, it is more important for FRA to know what party or parties to hold responsible for compliance with track safety standards. Therefore, the subsection (c) would require notification to the agency of reassignments of track responsibility, but it would no longer require approval by FRA now required in subsection (d). The text currently shown as subsection (d) would be eliminated.

The NPRM also proposed one minor change in current subsection (e), substituting the name "Surface Transportation Board" for "Interstate Commerce Commission." This substitution is meant to reflect Congress' action in 1995 to eliminate the Interstate Commerce Commission and turn over many of its functions to the new Surface Transportation Board within the Department of Transportation. With the elimination of the current text of subsection (d), this subsection now designated as (e) would become subsection (d).

Comments: Comments received were supportive of these changes.

Final rule: Subsection (f) of this section is added to include in the category of those responsible for compliance with the track standards those who perform the function of complying with the standards, not just the track owner. For example, this addition will hold track maintenance contractors responsible for compliance. This is not inconsistent with past enforcement and it conforms to the authority given FRA by the statute. See 49 U.S.C. 21301 and 1 U.S.C. 1.

Paragraph (e) of this section is changed to correct a typographical error in the NPRM. The correct cite for the Federal law which gives the Surface Transportation Board authority to direct rail service is 49 U.S.C. 11123.

Section 213.7—Designation of Qualified Persons To Supervise Certain Renewals and Inspect Track

Proposed rule: In the past, FRA has interpreted this section in a way that allowed signal maintainers and other railroad employees to pass trains over broken rails or pull-aparts in situations when they were the first on the scene to investigate a signal or track circuit problem. Under this interpretation, the intent of the regulation would not be violated if signal maintainers or others had been given selected training relating to the safe passage of trains over broken rails and pull-aparts. The BMWE, however, has argued that this section was never intended to allow for the partial qualification of personnel on Part 213 standards.

The RSAC recommended the creation of a new subsection (d) which prescribes the manner in which persons not fully qualified as outlined in subsections (a) and (b) of this section may be qualified for the specific purpose of authorizing train movements over broken rails and pull-aparts. Language in the new subsection is specific to employees with at least one year of maintenance of way or signal experience and requires a minimum of four hours of training and examination on requirements related to the safe passage of trains over broken rails and pull-aparts. The purpose of the examination is to ascertain the person's ability to effectively apply these requirements. A railroad may use the examination to determine whether or not a person should be allowed to authorize train movements over broken rails and pull-aparts. However, the examination is not to be used as a test to disqualify the person from other duties.

The maximum speed over broken rails and pull-aparts shall not exceed 10 m.p.h. However, movement authorized by a person qualified under this subsection may further restrict speed over broken rails and pull-aparts if warranted by the particular circumstances. This person must watch all movements and be prepared to stop the train if necessary. Fully qualified persons under § 213.7 must be notified and dispatched to the location promptly to assume responsibility for authorizing train movements and effecting temporary or permanent repairs. The word "promptly" is meant to provide the railroad with some flexibility in events where there is only one train to pass over the condition prior to the time when a fully qualified person would report for a regular tour of duty, or where a train is due to pass over the condition before a fully qualified person is able to report to the scene. Railroads should not use persons qualified under 213.7(d) to authorize multiple train movements over such conditions for an extended period of time.

Comments: Comments generally supported the proposed amendments to this section. One commenter argued that only those employees fully qualified under § 213.7 should be designated to authorize train movements over broken rails and pull-aparts. FRA disagrees with this statement. For the narrow purpose of temporarily authorizing train movements over broken rails or pull aparts, a person does not need to be trained in all of the remedial actions included in Part 213, as outlined in § 213.7.

Several commenters suggested that § 213.7 should contain a requirement for the requalification of employees designated to inspect track or to supervise restorations or renewals. A regulation requiring such requalification of designated persons would overlap the existing regulation, as FRA has long held that the requirement to be "qualified" is a continuing requirement, not a static one, and it is the responsibility of the track owner to assure that persons designated under this section are qualified at all times. This mandate for qualification is not periodic, it is continuing. FRA will address this issue by issuing a technical bulletin containing "good practice" industry guidelines for the requalification of persons designated under § 213.7, as drafted by the Track Working Group.

Final rule: FRA believes that persons who are trained, examined, and periodically re-examined on specific issues relating to the singular function of passing trains over broken rails and pull-aparts at restricted speed does not violate the intent of the Track Safety Standards, nor does this practice compromise safety provided those persons demonstrate to the track owner that they know and understand the requirements on which they were examined.

FRA proposes to re-designate paragraph (d) in the NPRM as paragraph (c) in the final rule. Similarly, paragraph (c) in the NPRM will become paragraph

(d) in the final rule with a reference to "persons not fully qualified" for the purpose of maintaining records of those designations. These changes provide for a more orderly structure of the requirements of this section and also recognize FRA's and the railroads "need to know" what persons are being designated under this new paragraph for purposes of compliance with this part.

Section 213.9—Classes of Track: Operating Speed Limits

Proposed rule: The NPRM proposed to move Class 6 standards to Subpart G, a new subpart which establishes track safety standards for high speed rail operations. As proposed in the NPRM, the new subpart would consist of Class 6 and three new track classes, Classes 7 through 9, to accommodate train speeds up to 200 m.p.h. The Track Working Group and the RSAC recommended including Class 6 in the high speed standards because that class of track already requires certain heightened maintenance practices not required by the lower classes of track.

Comments: Comments received generally supported the proposed amendment to this section. One commenter suggested that the provision under § 213.9(b) allowing operation for up to 30 days over track not in compliance with Class 1 standards was too liberal, and this option should only be allowed as an upper limit for track under emergency repairs.

Final rule: FRA believes that the option provided the track owner under subsection (b) of this section, to continue operations over track not in full compliance with Class 1 standards, at Class 1 speeds for a period of not more than 30 days, is appropriate, considering the many types of defects that can occur and the various levels of risks associated with these defects. The regulation requires that the person designated under § 213.7(a) who makes the determination to continue operations at Class 1 speeds shall do so only after personally evaluating the immediate circumstances and the associated risks presented by the non-compliance condition, and then determining that operations may safely continue.

However, this provision is not meant to supplant the remedial actions for defective rails prescribed in § 213.113. If a person designated under § 213.7 determines that tracks containing defective rail may continue in use, the rail must be replaced or the remedial action prescribed in the table in § 213.113 must be initiated.

There are several minor editorial changes to this section. In subsection (a), the reference to subsection (c) contained in the NPRM was deleted in the final rule because there is no subsection (c) to this section. The final rule also cross-references the maximum allowable speed for excepted track in the § 213.9(a) table concerning "Maximum Allowable Operating Speeds."

Otherwise, this section as proposed, is adopted in this final rule. In grouping Class 6 with Classes 7 through 9, FRA does not suggest, and it would be inaccurate to infer, that Class 6 track or operation of trains over Class 6 track at the speeds permitted is in any way unconventional or unusual. Trains have been run at those speeds for decades.

Section 213.11—Restoration or Renewal of Track Under Traffic Conditions

Proposed rule: An added phrase recommended by the RSAC for the end of this section would clarify a qualified inspector's authority to limit the speed of trains operating through areas under restoration or renewal. In the Track Working Group, the BMWE expressed concern that the current language of the section provides no guidance for track inspectors determining the appropriate speed through restoration areas. The language proposed by the NPRM gives a qualified track inspector discretion to set train speed through a work area, but does not allow the inspector to authorize trains to operate at speeds faster than the maximum speed for the appropriate track class. This change does not represent a change to past interpretation and enforcement of this section; it is merely a clarification of established policy.

Comments: Comments received supported the proposed amendment.

Final rule: The section as proposed is adopted in this final rule.

Section 213.13—Measuring Track Not Under Load

Proposed rule: The proposed rule recommended no changes to this section.

Comments: One commenter suggested that the phrase "under a loaded condition" should be more clearly defined.

Final rule: FRA considers that the dynamic loading conditions applied by train operations is implicit in the phrase "under a loaded condition" and therefore the final rule is adopted as proposed by the NPRM.

Section 213.15—Penalties

Proposed rule: The NPRM proposed no changes to this section. The section covers all subparts to this part, including the new Subpart G.

Comments: One commenter advised FRA that Appendix B had not been revised to reflect entries for the new § 213.119 addressing Continuous Welded Rail (CWR).

Final rule: The final rule changes this section in several ways. The section is now entitled, "Penalties" rather than "Civil penalties" because it now includes a provision for criminal penalties. The authority for FRA to initiate criminal penalties is granted by the statute at 49 U.S.C. 21311.

The section also adds language to indicate that "person" as used in this section is defined by the statute at 1 U.S.C. 1 and includes, but is not limited to, a railroad, manager, supervisor, official, agent of the railroad, owner, manufacturer, lessor or lessee of railroad equipment or track, independent contractor to the railroad.

The section also changes the maximum penalties FRA is authorized to assess for violations of the provisions of this Part. The maximum penalty is raised from $10,000 to $11,000 for violations, and from $20,000 to $22,000 for willful violations. This change is included to comply with the provisions of the Debt Collection Improvement Act of 1996 which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. *See* Pub. L. 104–134, April 26, 1996. According to the Act, the inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June, 1995, exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. Hence, the maximum penalties for violations of this Part are increased by 10 percent. In addition, the minimum civil penalty amount shown in this section is changed from $250 to $500 to conform with Rail Safety Enforcement and Review Act of 1992, codified at 49 U.S.C. 21301.

In further compliance with the Debt Collection Improvement Act, FRA reviewed existing penalties contained in Appendix B of Part 213. After examination of those penalties and FRA's enforcement policies, FRA decided that the existing penalties require no adjustment at this time.

The civil penalties shown in Appendix B of the NPRM did not include penalties for CWR, torch cut rail, new provisions in excepted track or Subpart G. The Appendix B in this final rule includes penalties for the new provisions in the final rule. Because

FRA's civil penalties are statements of policy, notice and comment of these changes were not required.

Section 213.17—Exemptions

Proposed rule: The Track Working Group considered a proposal by the BMWE that this section be eliminated. However, the group agreed that the existing language allowing for the temporary suspension of certain track standards is appropriate and exemptions are necessary for the industry to experiment with alternative methods of compliance and new technology. Further, FRA is required by law to consider appropriately suggested waiver requests and has adopted generally applicable procedures for doing so in 49 CFR Part 211. Therefore, the NPRM recommended that this section be left as currently written.

Comments: No comments received.

Final rule: The title of this section, as well as the language of the section itself, are changed by the replacement of "exemptions" with "waivers." This language change makes the section consistent with the language contained in 49 U.S.C. 20103, as well as 49 CFR Part 211.

Section 213.19—Information Collection

Proposed rule: The addition of this section was not proposed in the NPRM.

Comments: No comments were received concerning this addition.

Final rule: FRA adds this section to show which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* The requirement for approval by OMB has been added since the Track Safety Standards were first issued. While subsequent revisions to the track standards have received OMB approval, those approvals have not been reflected in the standards themselves.

Section 213.31—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.33—Drainage

Proposed rule: In its 1990 petition for revision of the track standards, the BMWE requested that this section be expanded to include more specific requirements for drainage and water diversion around track roadbeds, addressing water seeping toward the track, water falling upon the roadbed, cross drainage, and the use of geotextiles. The proposal was discussed by the Track Working Group, as was a proposal by the AAR that merely modified the phrase "clear of obstruction" to "sufficiently clear of obstruction." The NPRM proposed to follow an RSAC recommendation that the section be left unchanged.

Comments: No comments received.

Final rule: The section as proposed is adopted in this final rule.

Section 213.37—Vegetation

Proposed rule: The NPRM proposed to add a phrase to subsection (b) to include a requirement to clear vegetation from signs and signals along railroad rights-of-way and at highway-rail grade crossings. The current regulation stipulates only that vegetation cannot interfere with visibility of railroad signs and signals. Because the scope of Part 213 limits vegetation requirements to railroad property, this proposal was not intended to be an attempt to dictate standards for surrounding landowners. The additional language was intended only to cover the clearing of vegetation at highway-rail grade crossings to provide adequate visibility to the traveling public of railroad signs and signals; it was not intended to cover or preempt state or local requirements for the clearing of vegetation on railroad rights-of-way at highway-rail grade crossings.

Comments: Comments received supported the proposed amendment.

Final rule: The final rule includes one minor change to the rule text of this section to correct an error regarding the effective date for compliance with the change. In the NPRM, paragraphs (b)(1) and (2) were both exempt from compliance for a period of one year following the effective date of the rule. The requirement for controlling vegetation along the right-of-way so that it does not obstruct the visibility of railroad signs and signals, as outlined in paragraph (b)(1), has been a requirement of the Track Safety Standards since their inception. The final rule will clarify that only paragraph (b)(2), which was added to enhance visibility to the traveling public of railroad signs and signals at highway-rail crossings, will be exempt from compliance for one year following the effective date of the rule.

Section 213.51—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.53—Gage

Proposed rule: The proposed rule recommended no changes to this section.

Comments: No comments received.

Final rule: The final rule includes one minor editorial change to this section. The section now cross-references the maximum allowable gage for excepted track in the gage table under § 213.53(b) which was inadvertently omitted in the NPRM.

Section 213.55—Alinement

Proposed rule: The NPRM introduced a 31-foot chord requirement, in addition to the present 62-foot chord requirement, for measuring alinement on curves in Classes 3 through 5 track. The RSAC, on advice from the Track Working Group, recommended this addition to control transient short wavelength variations in alinement. This control was considered necessary to introduce an averaging approach for the application of the V_{max} formula which determines the maximum allowable operating speed for each curve. The change in the application of the V_{max} formula is discussed in § 213.57 of this notice.

Comments: Comments received supported the proposed amendment.

Final rule: The section as proposed is adopted in this final rule.

Section 213.57—Curves; Elevation and Speed Limitations

Proposed rule: The existing subsection (a) limits the design elevation on curves to a maximum of six inches. However, this subsection also provides for a deviation from this design elevation, which is contained in the § 213.63 table. For a curve elevated to six inches in Class 1 track, the allowable deviation would be three inches and therefore any point in that curve could have as much as nine inches of elevation and remain in compliance. For a similar situation in Class 3 track, any point in that curve could have as much as seven and three-fourths inches of elevation and still be in compliance. For modern rail cars with a high center of gravity, low speed curve negotiation under excessive levels of superelevation places the vehicle in an increased state of overbalance. This condition creates the possibility of wheel unloading and

subsequent wheel climb when warp conditions are encountered within the curve.

The Track Working Group considered the characteristics of the present-day vehicle fleet and concluded that a lower limit on maximum elevation in a curve should be prescribed in the regulations. Therefore, the NPRM proposed to revise subsection (a) to limit the amount of crosslevel at any point in a curve to not more than eight inches on Classes 1 and 2 track, and not more than seven inches on Classes 3 through 5 track.

Subsection (b) of this section addresses the maximum allowable operating speed for curved track. The equilibrium speed on a curve is the speed where the resultant force of the weight and centrifugal force is perpendicular to the plane of the track. The American Railway Engineering and Maintenance-of-way Association's (AREMA) Manual of Engineering, Chapter 5, states that passenger cars have been shown to ride comfortably around a curve at a speed which produces three inches of underbalance, or otherwise stated, three inches less elevation than would be required to produce equilibrium conditions. The AREMA Manual sets forth a formula based on the steady-state forces involved in curve negotiation which is commonly referred to as the V_{max} formula. This formula considers the variables of elevation, curvature, and the amount of unbalanced elevation or cant deficiency in determining the maximum curving speed. (Note: FRA considers the terms "unbalanced elevation" and "cant deficiency" to be interchangeable.) The present standards under paragraph (b) limit curving speed based on a maximum of three inches of unbalance or cant deficiency and is commonly referred to as the "three-inch unbalance formula." FRA has granted waivers for other levels of unbalance on specified equipment.

Over the years, railroad engineers have differed as to the application of this three-inch unbalance formula. Some engineers have suggested the designed elevation and curvature should be used to calculate the maximum operating speed around a curve. Other engineers recommend that an average of the entire curve or segment of the curve better recognizes situations where steady-state conditions change. For example, the elevation may be decreased through a road crossing to accommodate road levels and then increased beyond the crossing.

Recognizing the origin and purpose of the V_{max} formula, the Track Working Group recommended that an average of the alinement and crosslevel measurements through a track segment in the body of the curve should be used in the formula to arrive at the maximum authorized speed. This approach recognizes the "steady-state" purpose of the formula. Transient locations (points) are covered by the alinement and track surface tables. Normally, approximately 10 stations are used through the track segment, spaced at 15'6" apart. If the length of the body of the curve is less than 155 feet, measurements should be taken for the full length of the body of the curve.

This uniform or averaging technique over the 10 stations through the track segment is consistent with the concept used by the vehicle/track dynamicists who discuss "g" levels in steady-state conditions, often considered to be one or two seconds. At 80 m.p.h., a vehicle will have traversed approximately 118 feet of track in one second. Measurements taken over 155 feet (10 stations at 15'6") provide the necessary distance to determine the behavior of the vehicle over the one- or two-second steady-state interval.

Analysis has shown that, although application of the V_{max} formula on a point-by-point basis is overly conservative, it does provide for the coverage of certain combinations of alinement and crosslevel deviations in Classes 3 through 5 track which could result in wheel climb derailments. However, further analysis has shown that these transient short-wavelength anomalies can be covered by the introduction of a 31-foot chord to the alinement table contained in § 213.55.

The Track Working Group also recommended the addition of new paragraphs (c), (d), (e), and (f) which will permit curving speeds based on four inches of unbalance or cant deficiency for certain categories of equipment that demonstrate safe curving performance at this level of unbalance. The means of qualification is a basic procedure known as a "static lean" test that has been used many times in recent years for the testing of equipment for operation at higher cant deficiencies. Although four inches of cant deficiency is usually applied to passenger trains, other types of equipment with comparable suspension systems, centers of gravity, and cross-sectional areas may perform equally well. Standard freight equipment, however, typically does not have the prerequisite vehicle characteristics which would allow curving speeds based on more than three inches of cant deficiency. The Track Working Group recommended that FRA review the information provided by the track owner or operator to verify safe curving performance and approve the proposal before the vehicles are operated at four inches of cant deficiency.

The NPRM proposed to revise Appendix A, which currently contains a table specifying the maximum allowable operating speed for each curve based on three inches of cant deficiency. Under this proposed change, Appendix A would be amended to include two tables. Table 1 would be identical to the current table, while Table 2 would specify curving speeds based on four inches of cant deficiency.

Comments: Comments received supported the proposed amendments.

Final rule: FRA adds paragraph (g) to this section to afford track owners or railroads operating above Class 5 speeds an option to qualify equipment at cant deficiencies greater than four inches in lower track classes. Track owners or railroads operating under the provisions of Subpart G may exercise the option on lower track classes (Classes 1 through 5) that are contiguous with high speed territory without first petitioning FRA for a waiver from compliance with the other provisions of § 213.57.

Under paragraph (g), a track owner or railroad operating under Subpart G on track that is contiguous to lower speed track may request FRA approval to operate at a higher level of cant deficiency using the same procedures available under § 213.329(c) and (d). The track owner or railroad must submit to FRA for approval a test plan which will determine through engineering analysis the safety limits for lateral carbody accelerations which can be used as a surrogate measure to determine the amount of wheel unloading under cant deficient operation.

Upon FRA approval of the test plan, the track owner or railroad may conduct incrementally increasing train speed test runs to demonstrate that wheel unloading is within the prescribed safety limits. Once the test is completed and FRA approves a level of cant deficient operation, paragraph (g) requires geometry car inspections and acceleration measurements to confirm the integrity of the vehicle/track interaction on the curves.

The provision in paragraph (g) does not apply to track owners or railroads which operate trains in only Classes 1 through 5. FRA must consider other factors associated with track in Classes 1 through 5, such as the likelihood of a decrease in overall track quality and an absence of information generated through vehicle qualification testing procedures as required under § 213.345. Therefore, a track owner or railroad wishing to operate in Classes 1 through

5 at cant deficiencies greater than four inches must petition FRA for a waiver.

Section 213.59—Elevation of Curved Track; Runoff

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

§ 213.63—Track Surface

Proposed rule: The present track surface table contained in this section was established in the original standards more than 20 years ago and has served the industry well as a minimum safety requirement. However, some of the parameters need updating to recognize the knowledge gained from investigation of derailment causes, engineering analysis, and changes in terminology. Therefore, the NPRM proposed several changes to track surface requirements to better address current knowledge of track/vehicle interaction.

The NPRM proposed that the parameter referring to the rate of runoff at the end of a track raise and the parameter for deviation from uniform profile should both remain unchanged. The profile parameter is conservative for single occurrences on both rails and less conservative for repeated perturbations.

In the 1982 revisions to the Track Safety Standards, the requirement for maintenance of curve records, including degree of curvature and the amount of elevation designated in curves was removed. Since that time, the term "designated elevation" has been controversial and difficult to apply. The NPRM proposed to remove that term from the revised table.

The NPRM also proposed to revise the way the Track Safety Standards address transition spirals. For many curves, especially in the lower track classes, track maintenance personnel often differ as to the locations where spirals begin and end, as well as to the measured runoff rate. In view of the somewhat subjective nature of the concept of uniform runoff in spirals, the proposed changes in this notice use a different approach from runoff or "variation in crosslevel in spirals" and incorporate this parameter into another parameter.

In the present track surface table, the maximum variation in crosslevel in spirals could exceed that allowed on tangents and in the full body of curves over the same distance. The mechanism for derailment in the body of the curve is the same as in the spiral. The NPRM proposed that the differences in crosslevel in spirals be included in one parameter to simplify the table and correct the discrepancy that currently exists. The NPRM also proposed that the existing parameters referring to "deviation from designated elevation" and "variation in crosslevel" in spirals are unnecessary, provided spiral variations in crosslevel are included in the "warp" parameter. The "warp" parameter is measured by determining the difference in crosslevel between two points less than 62-feet apart.

While the difference in crosslevel parameter (warp) addresses the majority of situations where wheel climb or rock off can occur, three footnotes are added to the table to address specific situations.

The footnote identified by an asterisk inside the table addresses the present practice on some railroads to design a greater runoff of elevation in spirals due to physical restrictions on the length of spirals. Spiral runoff in new construction must be designed and maintained within the limits shown in the table for difference in crosslevel.

Footnote 1 is included to address the known derailment cause where a warp occurs in conjunction with an amount of curve elevation that approaches the maximum typically in use. When a vehicle is in an unbalanced condition on this curve elevation and encounters a warp condition, the vehicle is subjected to wheel/rail forces that could result in wheel climb.

Footnote 2 is included to address the harmonic rock off problem of which the railroad industry has been aware for many years. Under repeated warp conditions, the vehicle can experience an increase in side-to-side rocking that may result in wheel climb in curves or center plate separation on tangents.

Comments: Comments received supported the proposed amendments. One commenter questioned the use of the terms "variation" and "difference," and recommended the consistent use of one or the other, but not both.

Final rule: The term "variation" only appears in the statement behind the asterisk inside the track surface table. The term "variation" is used because this statement refers to the previous warp standard for spirals which used the same term. In certain locations, the prior standard for warp in spirals will be grandfathered due to physical restrictions and therefore FRA believes the terms should be consistent. In all other instances in this section, the term "difference" is used exclusively. The final rule makes one change in the track surface table under the parameter described as the difference in crosslevel between any two points less than 62 feet apart, or commonly referred to as the "warp" parameter. The results of recent track twist (warp) studies conducted at the Transportation Technology Center (TTC), where three different vehicle types were tested to determine their responses to crosslevel and combined crosslevel/alinement perturbations on tangent and curved test zones, indicate that a limit for warp of 2¼ inches for Class 2 track would be more appropriate than the proposed limit of 2½ inches by RSAC. The report of the TTC testing was not available to the Track Working Group when their recommendations were made.

Section 213.101—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.103—Ballast; General

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.109—Crossties

Proposed rule: The NPRM proposed to amend this section to include several recommendations made by the Track Working Group and adopted by the RSAC. After reviewing FRA's Accident/Incident data base, the Track Working Group concluded that wide gage resulting from defective crossties continues to be the single largest causal factor associated with track-caused reportable derailments.

Gage widening forces applied to the track structure from the movement of rolling stock tend to increase as track curvature increases. Therefore, the NPRM proposed to increase the number of effective crossties required under subsection (c) for turnouts and curved track with over two degrees of curvature. The purpose of this proposed requirement was to strengthen the track structure to enable it to better resist such forces.

In Class 1 track, the required number of crossties in any 39-foot segment of track would increase from five to six; in Class 2 track, from eight to nine; in Class 3 track, from eight to 10; and in Classes 4 and 5 track, from 12 to 14. These changes were proposed to become effective two years after the effective date of the final rule.

Under subsection (d), the NPRM proposed an optional requirement for the number and placement of crossties near rail joints in Classes 3 through 5 track. The existing requirement calls for one crosstie within a specified distance from the rail joint location, while the proposed optional requirement would allow two crossties, one on each side of the joint, within a specified distance from the rail joint location. FRA previously examined both standards under various static loading conditions. The results indicated that the proposed optional requirement provides equal or better joint support than the present requirement.

The NPRM also proposed to add a new subsection (e) to address track constructed without conventional crossties, such as concrete-slab track. The existing standards do not address this type of construction in which the running rails are secured through fixation to another structural member. The proposed addition addressed this type of track construction by requiring railroads to maintain gage, surface, and alinement to the standards specified in subsections (b)(1)(i), (ii), and (iii).

Comments: Comments received supported the proposed amendments. One commenter suggested that the GRMS technology be incorporated into this section.

Final rule: As discussed earlier in the preamble to this final rule, a separate task group continues to evaluate GRMS technology for possible incorporation into the Track Safety Standards.

The final rule includes subsection (c) as it is currently written, as well as subsection (d) to become effective two years after the effective date of this final rule.

The section as proposed is adopted in this final rule with renumbering of the subsections. Subsection (d) in the NPRM appears as subsection (f) in the final rule, and subsection (e) in the NPRM appears as subsection (g) in the final rule.

Section 213.113—Defective Rails

Proposed rule: The NPRM proposed several substantive changes to this section which reflect the results of FRA's on-going rail integrity research program. The results indicate the need to revise the remedial action tables and specifications to more adequately address the risks of rail failure, reserving the most restrictive actions on limiting operating speed for those rail defects which are large enough to present a risk of service failure.

Because "zero percent" entries serve no useful purpose, they should be dropped from the remedial action tables. Similarly, "100 percent" of rail head cross-sectional area is not a meaningful dividing point for transverse defects. The proposed revisions to the remedial action table for transverse defects placed a lower limit of five percent of the rail head cross-sectional area. If a transverse defect is reported to be less than five percent, no remedial action would be required under the revised standards. Defects reported less than five percent are not consistently found during rail breaking programs and therefore defect determination within this size range is not always reliable. Furthermore, if the determination is reliable, defect growth to service failure size within the newly established testing frequency under § 213.237 is highly unlikely. The proposed revisions to the remedial action table for transverse defects also established one or more mid-range defect sizes, between five percent and 100 percent, each of which would require specific remedial actions.

In the proposed revised remedial action table, all longitudinal defects were combined within one group subject to identical remedial actions based on their reported size. These types of longitudinal defects all share similar growth rates and the same remedial actions are appropriate to each type. The lower limit of "0" inches was eliminated and the size divisions were revised upward slightly to reflect FRA's research findings which indicate that this class of rail defect has a relatively slow growth rate.

The "0" inch lower limit was eliminated also for bolt hole cracks and broken bases. The proposed revision also included minor changes in the size divisions for bolt hole cracks, as well as changes in the required remedial action for broken bases less than 6 inches and damaged rail.

The NPRM also proposed to add "Flattened Rail" to the rail defect table. Although it is not a condition shown to affect the structural integrity of the rail section, it can result in less-than-desirable dynamic vehicle responses in the higher speed ranges. The flattened rail condition is identified in the table, as well as in the definition portion of subsection (b), as being ⅜ inches or more in depth and 8 inches or more in length.

The Track Working Group discussed at length a "break out in rail head," but was unable to agree on a standard definition. The RSAC therefore recommended that the industry continue to be guided by FRA's current interpretation that a break out in the rail head consists of a piece physically separated from the parent rail.

The NPRM also proposed to make several substantive revisions to the remedial actions specified under "Notes" in subsection (a)(2) of this section. A new note "A2" was added to address the mid-range transverse defect sizes which were added to the table. This remedial action allows for train operations to continue at a maximum of 10 m.p.h. for up to 24 hours, following a visual inspection by a person designated under § 213.7.

Note "B", which currently does not define a limiting speed, was changed to limit speed to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

Notes "C", "D", and "H" were revised to limit the operating speed, following the application of joint bars, to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. Presently, the standards limit speed to 60 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

A second paragraph in Note "C," the remedial action which applies specifically to detail fractures, engine burn fractures, and defective welds, proposed a significant change to the current standards. This revision addressed defects which are discovered in Classes 3 through 5 track during an internal rail inspection required under § 213.237, and whose size is determined not to be in excess of 25 percent of the rail head cross-sectional area. For these specific defects, a track owner may operate for up to four days at a speed limited to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. If the defective rail is not removed or a permanent repair made within four days of discovery, the speed is limited to 30 m.p.h. until joint bars are applied.

Under the existing standards, these types of defects, predominant on heavy utilization trackage, would require a 30 m.p.h. restriction until joint bars are applied. Practice within the industry today is to operate the rail test vehicle until the number of defects found exceeds the railroad's ability to effect immediate repairs. At that time the rail test vehicle is shut down for the day.

The purpose of this practice is to reduce speed restrictions which not only affect the railroad's ability to move trains, but also can produce undesirable in-train forces that can lead to derailments. However, prematurely shutting down rail test car operations negate any possibility of discovering larger and more serious defects that may lie just ahead.

Furthermore, the results of FRA's research indicate that defects of this type and size range have a predictable slow growth life. Research indicates that even on the most heavily utilized trackage in use today, defects of this type and size are unlikely to grow to service failure size in four days.

Comments: Comments received generally supported the proposed amendments to this section. One commenter suggested that definitions for "bolt hole crack," "defective weld," and "head-web separation" should be added to subsection (b). This commenter also suggested that remedial actions for certain rail defects, which are expressed in terms of an "either/or" option, could be made less ambiguous by bracketing those options.

One commenter suggested that a periodic re-examination of "flattened rails" should be required so that the severity and growth rate of this rail defect can be monitored. This commenter also suggested that "shelled rail" should be defined as a rail defect which would require some specified remedial action.

One commenter argued that when a track owner voluntarily elects to conduct a continuous search for internal defects on Class 1 and 2 track where regulatory requirements for inspections of this type are non-existent, any rail defects found should be subject to the requirements of only remedial action B, regardless of the defect type or size of the defect. The commenter argued that such a provision would ensure that there is not a regulatory disincentive for voluntarily conducting internal rail inspections on Class 1 and 2 track.

Another commenter suggested that FRA's definition of "break out in rail head" should be more restrictive than the present version. This commenter also suggested that the final rule should set parameters for determining "excessive rail wear" in a manner similar to the methods used to measure excessive wheel wear prescribed in the 49 CFR Part 215, Railroad Freight Car Safety Standards.

Final rule: The Track Working Group discussed at length the issues associated with "flattened rail" (localized collapsed head rail) and "shelled rail." FRA and industry research indicates that these occurrences are more accurately categorized as rail surface conditions, not rail defects, as they do not in themselves cause service failure of the rail.

FRA believes that the risk of detail fractures being masked by "shelled rail" conditions was appropriately addressed in the proposed rule by specifying more restrictive inspection intervals and by requiring specific remedial actions to be taken when surface conditions such as "shelled rail" prevent a valid inspection for internal defects. The proposed rule addresses the issue of "flattened rail" in terms of a specified remedial action for those of a certain depth and length. FRA believes that further monitoring of "flattened rail" conditions can be accomplished without prescribing regulations which mandate inspection procedures beyond which already exist. FRA's rail integrity research program will continue to study "shelled rail" and "flattened rail" conditions, and in the event that research indicates additional regulation is necessary in the future, FRA will not hesitate to do so.

The Track Working Group was unable to improve FRA's current definition of a "break out in rail head." The current definition, when viewed in terms of the remedial action which it requires when met, has been considered too liberal under certain circumstances, while conversely, it has also been considered too conservative under other circumstances. The circumstances primarily dictated by the type and size of defect, along with the location of the defect in the rail. FRA believes that under the current remedial action requirement, the current definition for "break out in rail head" is adequate.

The issue of "excessive rail wear" continues to be evaluated by FRA's rail integrity research program. FRA believes that insufficient data exist at this time which would indicate that parameters for this condition should be proposed as a minimum safety standard.

FRA believes that the remedial action tables and specifications in this final rule better address the risks associated with rail failure. These risks are primarily dependent upon defect type and size and should not be dependent upon the manner or mechanism which reveals the existence of the defect. FRA believes that providing special regulatory relief for defects found during voluntary inspections for internal rail defects would not be a prudent approach to take. However, in revising the remedial action table, FRA has sought to provide enhanced flexibility where warranted by safety considerations.

FRA agrees that additional definitions would be helpful, so this final rule adds definitions for "bolt hole crack," "defective weld," and "head-web separation." FRA also agrees that bracketing certain "either/or" remedial actions will clarify the intent of those requirements.

With the exception of these minor changes, the rule is adopted as proposed by the Track Working Group and endorsed by the RSAC.

Section 213.115—Rail End Mismatch

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.119—Continuous Welded Rail (CWR); General

Proposed rule: The NPRM proposed to introduce a requirement for railroads to establish and place in effect written procedures to address CWR. These procedures must address the installation, adjustment, maintenance and inspection of CWR track, and include a formal training program for the application of these procedures. The procedures, including a program for training, must be submitted to FRA within six months following the effective date of this rule. Although many railroads already have in effect a CWR program, FRA will review each submitted set of procedures for compliance with the individual requirements of the proposed regulation.

Within the last decade, through the determined efforts of researchers from industry and government, along with experience gained from accident investigators and track maintenance people, the railroad industry has gained a better comprehension of the mechanics of laterally unstable CWR track. As a result, the industry has identified maintenance procedures that are critical to maintaining CWR track stability.

As proposed, the requirements do not detail how each procedure is to be carried out. Rather, they identify the basic safety issues and permit railroads to develop and implement their own procedures to address those issues, provided the procedures are consistent with current research results as well as findings from practical experience documented in recent years. The procedures should be clear, concise, and

easy to understand by maintenance-of-way employees. A comprehensive training program must be in place for the application of these procedures.

The proposed regulation requires the designation of a "desired rail installation temperature range" for the geographic area in which the CWR is located. By definition contained in the proposed regulation, "desired rail installation temperature range" is the rail temperature range at which forces in CWR should not cause a track buckle in extreme heat, or a pull-apart during cold weather. Current general practice within the industry, based to a large extent on research findings, is to establish a "desired rail installation temperature range" which is considerably higher than the annual mean temperature for the geographic area in which the CWR is located. The regulation, as proposed in the NPRM, provides railroads with flexibility to establish the "desired rail installation temperature range" based on the characteristics of the specific territory involved and the historical knowledge acquired through the application of past procedures.

When CWR is installed and anchored/fastened at the "desired rail installation temperature range," it is considered to be in its initial "stress-free" state, where the net longitudinal force is equal to zero. Research discloses that many factors, some of which are unavoidable, like dynamics of train operation, the necessary lining and surfacing of the track structure, and performing rail repairs all contribute to a gradual lowering over time of the initial rail installation temperature range which increases the potential for track buckling. This phenomenon substantiates the need to install and anchor/fasten CWR at a relatively high rail installation temperature range.

Maintenance of the "desired rail installation temperature range" is critical to ensuring CWR stability. Therefore, the procedures for installation, adjustment, effecting rail repairs, and repairing track buckles or pull-aparts must compare the existing rail temperature with the "desired rail installation temperature range" for the area concerned.

The procedures also must address several other topics, such as rail anchoring, controlling train speed when CWR track has been disturbed, ballast re-consolidation, inspections, and recordkeeping for the installation of CWR and rail repairs that do not conform to the railroad written procedures. A track owner may update or modify CWR procedures as necessary, upon notification to FRA of those changes.

Development of individual CWR programs could prove burdensome for many small railroads. As recommended by the Track Working Group, FRA will work with the ASLRA to develop a generic set of CWR procedures to apply to low speed/low tonnage Class 2 and Class 3 railroad operations.

Comments: Comments generally supported the proposed amendment. One commenter questioned the need for certain railroads that only conduct low speed/low tonnage operations to adopt written procedures addressing CWR. Another commenter questioned FRA's enforceability of the proposed new section.

Final rule: The details of these procedures are to be based on research findings and sound engineering principles. FRA is committed to working with ASLRA to develop a generic set of CWR procedures with wide applicability for the spectrum of smaller railroads. FRA believes that certain requirements contained in the generic procedures, such as a requirement to operate at reduced speed following maintenance work which disturbs the track, will not have an impact on a railroad that normally only operates at 10 m.p.h. Other requirements of this generic set of procedures would also be less burdensome due to the nature of most low speed/low tonnage operations.

This new section is enforceable to the extent that CWR procedures must be developed and implemented, and employees responsible for their application must be trained on these procedures. In the proper exercise of its enforcement discretion, the agency is unlikely to take enforcement action against minor deviations from CWR procedures unless, together with other violations, they are part of a larger problem.

Section 213.121—Rail Joints

Proposed rule: Under existing subsection (a), the phrase "proper design and dimension" often has been interpreted to prohibit the use of any joint bar on a rail section for which it was not specifically designed. This interpretation does not consider the fact that certain joint bars are interchangeable between different rail sections. Therefore, the NPRM proposed to change the word "proper" to "structurally sound" in subsection (a).

In subsection (b), the NPRM proposed to add the modifier "excessive" in front of the phrase "vertical movement." The existing language in this subsection implies that no vertical movement of either rail could be allowed when all bolts are tight. This interpretation is too strict. FRA's Enforcement Manual suggests that FRA inspectors evaluate excessive vertical movement when determining compliance with this paragraph. This change would make the rule conform to sound practices.

The NPRM proposed to extend to Class 2 track the prohibition of torch cutting bolt holes in rail. The reference to joint bars was removed, the subject to be covered in the proposed new subsection (h) which restricts the practice of re-configuring joint bars. Joint bars for older rail sections are becoming increasingly difficult to find and are no longer being manufactured. Therefore, the new subsection (h) prohibits the re-configuration of joint bars in Classes 3 through 5 track, but not in Classes 1 and 2 track.

Comments: Comments generally supported the proposed amendments. One commenter agreed that the term "structurally sound" is more technically correct, but stated that the term provides no additional guidance as to what joint bars are interchangeable with various rail sections. Several commenters suggested that the prohibition on reconfiguring joint bars with a torch should be extended to Class 2 track. Another commenter suggested that the term "excessive" should be quantified.

Final rule: FRA believes the risks in the lower speed track classes are minimal when a railroad torch cuts bolt holes in joint bars and reconfigures joint bars with a torch. The most critical of joint bar failures are those in which the bar cracks or breaks through the middle two bolt holes. If this were to happen as a result of reconfiguring by a torch, a regulation already exists which prohibits any cracks or breaks in this area of the joint bar for any class of track.

FRA believes that the term "excessive" in the context of this section should be left to the discretion of a qualified person based on that person's evaluation of what risks may be associated with any particular set of conditions. FRA agrees that additional guidance should be provided for the interpretation of "structurally sound" joint bars and will work with the industry to develop and issue guidelines in the form of a Technical Bulletin addressing the interchange ability of joint bars between various rail sections. This approach is similar to a recent recommendation issued by FRA's Technical Resolution Committee.

The rule is adopted as proposed by the NPRM.

Section 213.122—Torch Cut Rail

Proposed rule: The NPRM proposed this new section to address the proper

handling of rails cut by the use of a torch. The practice of torch-cutting rail at one time was commonplace on railroads, but was discontinued in higher speed track several years ago when better saws were developed and railroads discovered that rails that have been torch-cut have a greater tendency to develop fractures. Today, on track Classes 3 and above, the practice is used almost exclusively for temporary emergency repairs, such as quickly returning a track to service following a derailment or washout. These locations are then quickly replaced with new rail. The purpose of this section is to outlaw the practice of torch cutting rails, except for emergency repairs, on all track in classes above Class 2. Train speed on track that has been torch cut for emergency repairs made after the effective date of this rule must be reduced to the maximum allowable speed for Class 2 until the torch cut rail is replaced.

The proposed section also provides railroads with guidance for eliminating old torch cut rail in track Classes 3 through 5. The industry believes no torch cuts exist in Class 6 track. Torch cuts in Class 5 track must be eliminated within a year of the effective date of this final rule, while torch cuts in Class 4 track must be removed within two years. Within one year of the effective date of this final rule, railroads must inventory existing torch cuts in any Class 3 track over which regularly scheduled passenger trains operate. Those torch cuts found and inventoried will be "grandfathered in." Any torch cuts that are found on such track after the expiration of one year and that are not inventoried will be limited immediately to Class 2 speed and removed within 30 days of discovery. If a railroad chooses to upgrade a segment of track from Classes 1 or 2 to Class 3, and regularly scheduled passenger trains operate over that track, the railroad must remove any torch cuts before the speeds can be increased beyond the maximum allowable for Class 2 track. If a railroad chooses to upgrade a segment of track from any class of track to Class 4 or 5, it must remove all torch cuts.

Comments: Comments received generally supported the proposed amendments. Several commenters suggested that torch cut rail ends be prohibited in all but Class 1 track. One commenter also suggested that existing torch cut rail ends be restricted to 10 m.p.h..

Final rule: FRA believes the risks associated with torch cut rail ends in Class 2 track are minimal based on lower speeds and lower impact loads. If rail defects were to develop as a result of torch cut rail ends, requirements already exist which would address them. FRA also believes that existing torch cut rail ends have survived the early mortality rate which is associated with rails that fail due to poor torch cutting practices, and therefore existing torch cuts do not present a significant risk, given the low frequency of expected failure and lower accident severity at Class 2 speeds.

The rule is adopted as proposed by the NPRM.

Section 213.123—Tie Plates

Proposed rule: The NPRM proposed to add a new subsection (b) to this section which reads, "In Classes 3 through 5 track, no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of rail and the bearing surface of the tie plate." The specific reference to "metal object" is intended to include only those items of track material which pose the greatest potential for broken base rails such as track spikes, rail anchors, and shoulders of tie plates. The phrase "causes a concentrated load by solely supporting a rail" further clarifies the intent of the regulation to apply only in those instances where there is clear physical evidence that the metal object is placing substantial load on the rail base, as indicated by lack of load on adjacent ties.

Comments: Comments supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.127—Rail Fastening Systems

Proposed rule: The NPRM proposed to change the title of this section from "Rail fastenings" to "Rail fastening systems" and to reduce the language of the regulation to one sentence which reads, "Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b)."

The change to "rail fastening systems" more adequately addresses the many individual components of modern-day elastic fastening systems, such as pads, insulator clips, and shoulder inserts. The failure of certain critical components within the system could adversely affect the ability of the individual fastener to provide adequate gage restraint. The revised language of the regulation provides for an evaluation of all components within the system, if necessary, in order to evaluate whether they are affording effective gage restraint.

The RSAC considered the current reference to qualified Federal or State track inspectors and the definition of a qualified State track inspector to be redundant, given the adoption of Part 212. Therefore, the NPRM proposed to delete the phrase "qualified Federal or State track inspector," as well as the last sentence of the current section which contains the definition of a qualified state track inspector.

Comments: Comments supported the proposed amendment. One commenter suggested that the GRMS technology be incorporated into this section.

Final rule: As discussed earlier in the preamble to this final rule, a separate task group continues to evaluate GRMS technology for possible incorporation into the Track Safety Standards. The rule is adopted as proposed by the NPRM.

Section 213.133—Turnouts and Track Crossings Generally

Proposed rule: The NPRM proposed to retain the language of subsection (a) which reads, "In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place." The AAR proposed to revise the language to say, "* * * the fastenings must be maintained for the safe passage of trains." The AAR contended that turnout and track crossings are designed with a high degree of redundancy, making it unnecessary for each fastening to be intact to maintain safety. However, the RSAC recommended that the regulations allow track inspectors discretion to evaluate immediate circumstances in determining what level of remedial action is necessary for loose or missing fastenings. RSAC recommended that inspectors be provided specific guidance about interpreting this provision, such as the guidance contained in technical bulletin T–95–09 recently issued by FRA.

The NPRM proposed to change subsection (b) to reflect proposals presented by the BMWE and by the AAR and FRA. The RSAC recommended that rail anchoring requirements be extended to include Class 3 trackage and that "rail anchors" be changed to "rail anchoring " so that rail anchoring would include elastic rail fasteners.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.135—Switches

Proposed rule: The NPRM proposed to revise subsection (b) to consider the existence of reinforcing bars or straps on

switch points where joint bars cannot be applied to certain rail defects, as required under § 213.113(a)(2), because of the physical configuration of the switch. In these instances, remedial action B will govern, and a person designated under § 213.7(a), who has at least one year of supervisory experience in track maintenance, will limit train speed to that not exceeding 30 m.p.h. or the maximum allowable under § 213.9(a) for the appropriate class of track, whichever is lower. Of course, the person may exercise the options under § 213.5(a) when appropriate.

The RSAC did not recommend specific dimensions for determining when switch points are "unusually chipped or worn," as provided for in subsection (h). FRA stated that its Accident/Incident data base indicates that worn or broken switch points are the largest single cause of derailments within the general category of "Frogs, Switches, and Appliances." However, the AAR contended that developing meaningful numbers for these measurements would be a difficult task because most of these derailments are related also to other causal factors such as wheel flange condition, truck stiffness, and train handling characteristics. The NPRM, therefore, proposed to retain the current wording in subsection (h), allowing qualified individuals to evaluate immediate circumstances to determine when switch points are "unusually chipped or worn."

The NPRM also proposed a new subsection (i) to read, "Tongue and plain mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track." This new subsection provides an exemption for this item of specialized track work, primarily used in pavement or street railroads, which by design does not conform to the maximum gage limits prescribed for Class 1 and excepted track.

Comments: Comments generally supported the proposed amendments. One commenter suggested that the term "unusually chipped or worn" be quantified.

Final rule: FRA believes that the term "unusually chipped or worn" in the context of this section should be left to the discretion of a qualified person based on that person's evaluation of what risks may be associated with any particular set of circumstances. The rule is adopted as proposed by the NPRM.

Section 213.137—Frogs

Proposed rule: The NPRM proposed to add a new subsection (d) to this section, which reads, "Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds." This subsection provides an exemption for an item of specialized track work which by design does not conform to the minimum flangeway depth requirements prescribed in subsection (a) of this section.

Comments: Comments received supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.139—Spring Rail Frogs

Proposed rule: The proposed rule recommended no changes to this section.

Comments: No comments were received.

Final rule: This final rule inserts the word "compression" for that of the phrase "a tension" in subsection (d) to correct a technical error in wording. In order for the wing rail to be held tight against the point rail, the spring must be in compression and not in tension.

Except for this minor change, the rule is adopted as proposed by the NPRM.

Section 213.141—Self-Guarded Frogs

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.143—Frog Guard Rails and Guard Faces; Gage

Proposed rule: To facilitate an easier understanding of the requirements contained in this section, the NPRM proposed to add a diagram to illustrate the method for measuring guard check gage and guard face gage. The proposal contained no substantive changes to this section.

Comments: Comments supported the proposed amendment.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.201—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.205—Derails

Proposed rule: The NPRM proposed to add language to this section designed to ensure that derails are maintained to function properly. The RSAC recommended these changes as additional safety features for train crews, as well as railroad employees working on and around tracks.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.231—Scope

Proposed rule: The Track Working Group discussed this section and recommended that it remain as currently written.

Comments: FRA received no comments.

Final rule: FRA agrees with the recommendation of the Track Working Group and this section as proposed is adopted in this final rule.

Section 213.233—Track Inspections

Proposed rule: The NPRM proposed several changes to subsection (b). The five m.p.h. restriction over highway crossings is eliminated to permit safe operation of vehicles through highway traffic. However, the subsection would still require an inspector to perform an adequate inspection, regardless of how the inspector operates over the crossing. Also, the word "switch" is replaced by the word "turnout" to clarify the track device originally intended to be addressed in the regulation.

The Track Working Group considered advising the RSAC to recommend specific speed restrictions for inspection vehicles. However, after several lengthy discussions, the group suggested instead that this subsection provide the individual inspector with sole discretion in determining vehicle speed based on track conditions, inspection requirements, and other circumstances that may vary from day to day and location to location. The group also suggested the insertion of a footnote at the end of this section which indicates this discretion is not limited by any other part of this section, and is extended to determine sight distance ("visibility remains unobstructed by any cause") which is referenced in paragraphs (b)(1) and (2) of this section.

The existing language under subsection (b) does not specify how many tracks may be inspected in one pass of an inspection vehicle in multiple track territory. FRA has never issued interpretive language regarding this issue, opting to judge the overall effectiveness of the inspection program

rather than the specific manner in which it was conducted. The NPRM proposed to establish some guidelines for hyrail inspections conducted in multiple track territory.

As a result, subsection (b), as proposed in the NPRM, contains additional language specifying the number of additional tracks that can be inspected, depending on whether one or two qualified individuals are in the vehicle, and depending on the distance between adjacent tracks measured between track centerlines. Inspectors may inspect multiple tracks from hy-rail vehicles only if their view of the tracks inspected is unobstructed by tunnels, differences in ground level, or any other circumstance that would prevent an unobstructed inspection of all the tracks they are inspecting. The revised subsection also requires railroad to traverse each main track bi-weekly and each siding monthly, and to so note on the appropriate track inspection records.

With respect to the inspection frequency required in subsection (c), neither the Track Working Group nor the RSAC could reach agreement in determining a frequency requirement that would be based on speed, tonnage, or track usage. Therefore, the NPRM did not propose to change the language in this subsection.

Comments: Comments generally supported the proposed amendments. Several commenters suggested that the requirements that address inspections in multiple track territory should be more restrictive. Several commenters suggested that a maximum speed limit should be set when performing inspections for compliance with this part, one of which suggested a maximum speed of 15 m.p.h..

Final rule: FRA believes that the appropriate vehicle inspection speed over a particular territory is subject to many variables, *i.e.*, track condition, type of track construction, weather conditions, time of day, as well as many others which may only be apparent to the individual inspector at that moment in time. With this in mind, FRA believes that the appropriate vehicle speed for any particular set of conditions should be determined by the person performing the inspection, including those performed in multiple track territory. The final rule provides for the inspector's discretion as it involves inspection speed and sight distance.

This final rule also changes this section by cross-referencing excepted track in the § 213.233(c) table for required inspection frequency.

Section 213.235—Inspection of Switches, Track Crossings, and Lift Rail Assemblies or Other Transition Devices on Moveable Bridges

Proposed rule: The NPRM proposed to change subsection (a) by adding the word "turnout" after the word "switch" to clarify the track device and the intent of the requirement which is to inspect the entire turnout. The word "switch" is retained to include switch point derails or any other device which is not considered a full turnout.

The NPRM proposed a second sentence to be added to subsection (a) which reads, "Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every three-month period." The nature of this type of switch requires a thorough inspection of the critical parts, some of which are non-redundant. Thorough inspection is best accomplished by operating the switch mechanism to allow for a better inspection of these components. The phrase "all positions" is intended to cover slip switches and lap switches.

In subsection (b), the word "turnout" is added after the word "switch" for the same reasons explained above.

Comments: Comments generally supported the proposed amendments. One commenter suggested that all switch mechanisms should be operated during inspections required under this section.

Final rule: FRA believes that a requirement to operate all switch mechanisms on a monthly basis would be too burdensome on the industry, especially in some geographical locations that are subject to snow, ice, and freezing conditions for many months of the year.

The final rule includes several changes to this section. On November 23, 1996, more than three weeks after the Track Working Group had submitted its recommendations for revision of the Track Safety Standards to the RSAC, an Amtrak passenger train derailed on the moveable bridge over the Hackensack River in Secaucus, New Jersey. This derailment was the result of a malfunctioning lift rail assembly which provides the transition from the moveable span to the fixed span on the bridge. Because of this derailment, FRA believes that transition devices on moveable bridges should be addressed in the revised Track Safety Standards.

Therefore, this final rule adds moveable bridge lift rail assemblies and other transition devices to the inspection requirements in this section. This section adds only a requirement to visually inspect on foot; it is not intended to impose additional functional requirements for bridge lift rail assemblies beyond what is already required by the Track Safety Standards. However, FRA considers these assemblies to be no less critical than switches or track crossings, and they should be subject to monthly on-foot visual inspections by a person qualified under § 213.7.

In addition, this section is restructured in order to reference the operation of specified switch operating mechanisms in a separate subsection (b). This change is designed to emphasize the importance of these non-redundant mechanisms.

Section 213.237—Inspection of Rail

Proposed rule: Under existing subsection (a), the Track Safety Standards require Classes 4 and 5 track, as well as Class 3 track over which passenger trains operate, to be tested annually for internal rail defects. This requirement was established at a time when main line freight traffic was considerably lighter than it is today. At the time the original standards were drafted, test frequencies generally equated to intervals between 15 and 20 million gross tons (MGTs), although there existed some track that carried 40 MGTs or more in one year. As a matter of practice, railroads generally test more often than presently required under the standards, with intervals between tests typically ranging from 20 to 30 MGTs. These typical intervals define a good baseline for generally accepted maintenance practices, and the industry's rail quality managers consider these limits as points of departure for adjustment of test schedules to account for the effects of specific track characteristics, maintenance, traffic, and weather.

The NPRM proposed to leave unchanged the present annual test requirement for Classes 4 and 5 track and Class 3 track over which passenger trains operate, based on risk factors associated with freight train speeds and passenger train operations. However, with the high utilization trackage that now exists on Class 1 freight railroads, the original requirement based solely on the passage of time, without regard to tonnage, is no longer adequate.

Selecting an appropriate frequency of rail testing is a complex and somewhat controversial task involving many different factors including temperature differential, curvature, residual stresses, rail sections, and cumulative tonnage. Taking into consideration all of the above factors, FRA's research suggests

that 40 MGTs is the maximum tonnage that can be hauled between rail tests and still allow a safe window of opportunity for detection of an internal rail flaw before it propagates in size to service failure. The NPRM proposed that intervals be set at once per year or 40 MGTs, whichever is shorter, for Classes 4 and 5 track and for Class 3 track over which passenger trains operate.

The NPRM also proposed that Class 3 trackage not supporting passenger traffic be subject to testing for internal rail defects. FRA's Accident/Incident data point to a need for inclusion of all Class 3 trackage in a railroad's rail testing program. Therefore, the NPRM proposed to add a requirement that Class 3 track over which passenger trains do not operate be tested once a year or once very 30 MGTs, whichever is longer.

The NPRM proposed the limit of once a year or 30 MGTs because a more frequent testing cycle or a cycle identical to that proposed for Classes 4 and 5 track would be too burdensome for the industry. The proposed limits are designed to give short line railroads and low tonnage branch lines some relief from the introduction of a new regulatory requirement and still reduce the present risks associated with not testing Class 3 track at all.

The NPRM also proposed the addition of subsections (d) and (e). Subsection (d) addresses the case where a valid search for internal rail defects could not be made because of rail surface conditions. Several types of technologies are presently employed to continuously search for internal rail defects, some with varying means of displaying and monitoring search signals. A continuous search is intended to mean an uninterrupted search by whatever technology is being used, so that there are no segments of rail which are not tested. If the test is interrupted, *i.e.*, as a result of rail surface conditions which inhibit the transmission or return of the signal, then the test over that segment of rail may not be valid because it was not continuous. Therefore, as proposed in the NPRM, a non-test is not defined in absolute technical terms. Rather, the provision leaves this judgment to the rail test equipment operator who is uniquely qualified on that equipment.

As proposed in the NPRM, subsection (e) specifies the options available to a railroad following a non-test due to rail surface conditions. These options must be exercised prior to the expiration of time or tonnage limits specified in paragraph (a) of this section.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section 213.239—Special Inspections

Proposed rule: The RSAC recommended no change to this section, and likewise, the NPRM proposed no change to the language in the regulation. However, the preamble of the NPRM provided an explanation of agency policy interpreting the section.

Comments: One commenter referred to the Notice of Safety Advisory 97–1, issued by FRA on September 4, 1997. *See* 62 FR 46793. The commenter recommended that the provisions contained in the advisory be adopted as regulations under this section.

Because of a number of fairly recent train derailments caused by unexpected track damage from moving water, FRA deemed it appropriate to issue the safety advisory to provide railroads with recommended procedures that reflect best industry practice for special track inspections. The procedures include: (1) prompt notification of dispatchers of expected bad weather; (2) limits on train speed on all track subject to flood damage, following the issuance of a flash flood warning, until special inspection can be performed; (3) identification of bridges carrying Class 4 or higher track which are vulnerable to flooding and over which passenger trains operate; (4) availability of information about each bridge, such as identifying marks, for those who may be called to perform a special inspection; (5) training programs and refresher training for those who perform special inspections; and (6) availability of a bridge maintenance or engineering employee to assist the track inspectors in interpreting the inspectors' findings.

Final rule: The rule is adopted as proposed by the NPRM, and does not incorporate the procedures outlined in the Notice of Safety Advisory 97–1. As it stated in that advisory, FRA believes that this section is necessarily general in nature, because it is not practical to specify in a minimum safety standard all the conditions which could trigger a special inspection, nor the manner in which any particular special inspection should be conducted. Of course, all such inspections should be conducted so as to effectively prevent derailments, and the procedures included in the safety advisory are designed to aid railroads in performing effective inspections.

Although this section contains a sample list of surprise events that routinely occur in nature, FRA does not view this provision as limited to only the occurrences listed or to only natural disasters. The section addresses the need to inspect after "other occurrences" which include such natural phenomena as temperature extremes, as well as unexpected events that are human-made, *e.g.*, a vehicle that falls on the tracks from an overhead bridge, a water main break that floods a track roadbed, or terrorist activity that damages track. This interpretation is not new; FRA has always viewed this section to encompass sudden events of all kinds that affect the safety and integrity of track.

Section 213.241—Inspection Records

Proposed rule: The NPRM proposed to change the requirement that railroads retain a record of each track inspection at division headquarters for at least one year. When this provision in subsection (b) was first written, railroads maintained many division headquarters throughout their systems, making it relatively convenient for railroads to maintain inspection records at these locations. Over the years, however, railroads consolidated many of their headquarters, often naming only a few locations as "division headquarters." FRA has contended that maintaining inspection records in only a few locations over a system that may include thousands of miles of track was not in keeping with the spirit of the regulation. Railroads have argued, on the other hand, that compelling them to maintain headquarters for no other purpose than to store records was a burdensome requirement.

The NPRM proposed to allow railroads to designate a location within 100 miles of each state where records can be viewed by FRA track inspectors following 10 days notice by FRA. The provision does not require the railroads to maintain the records at these designated locations, only to be able to provide viewing of them at the locations within 10 days after notification. The proposal stipulates locations within 100 miles of each state, rather than locations in each state, to accommodate those railroads whose operations may cross a state's line by only a few miles. In those cases, the railroad could designate a location in a neighboring state, provided the location is within 100 miles of that state's border.

A change to subsection (c) requires a track owner to record any locations where a proper rail inspection cannot be performed because of rail surface conditions. A new provision at § 213.237(d) specifies that if rail surface conditions prohibit the railroad from conducting a proper search for rail defects, a test of that rail does not fulfill the requirements of § 213.237(a) which requires a search for internal defects at

specific intervals. The new language in subsection (c) of this section requires a recordkeeping of those instances.

The NPRM also proposed to add a provision for maintaining and retrieving electronic records of track inspections. Patterned after an experimental program successfully tried by the former Atchison Topeka & Santa Fe Railroad with oversight by FRA, the provision in subsection (e) allows each railroad to design its own electronic system as long as the system meets the specified criteria to safeguard the integrity and authenticity of each record. The provision also requires that railroads make available paper copies of electronic records when needed by FRA or by railroad track inspectors.

Comments: Comments supported the proposed amendments.

Final rule: The rule is adopted as proposed by the NPRM.

Section by Section Analysis—High Speed Track Standards

Section 213.301—Scope of Subpart

Proposed rule: Subpart G applies to track required to support the passage of passenger and freight equipment in specific speed ranges higher than those permitted over Class 5 track. For those speeds above Class 5, the track and the vehicles operated on the track must be considered as an integral system. Of course, conventional passenger equipment has been operated for decades by many railroads at speeds up to 110 m.p.h. and on the Northeast Corridor by Amtrak and its predecessors at speeds up to 125 m.p.h. This subpart does not apply to technologies such as magnetic levitation that do not use flanged wheel equipment.

Comments: No comments were received pertaining to this section.

Final rule: A minor change in this section clarifies that Subpart G begins at a speed greater than 90 miles per hour (not at 91 miles per hour) for qualified passenger equipment and a speed greater than 80 miles per hour (not 81 miles per hour) for qualified freight equipment.

Section 213.303—Responsibility for Compliance

Proposed rule: Only two response options are available under this paragraph. Track owners who know or have notice of non-compliance with this subpart may either bring the track into compliance with the subpart or halt operations over that track. This section does not offer the railroad the option of operating under this subpart with the supervision of a qualified person, as in the standards for track Classes 1 through 5. Such an option would permit too much opportunity for disaster from human error. Under this subpart, if a track does not comply with the requirements of its class, it must be repaired immediately or train speeds must be reduced to the maximum speed for the track class with which the track complies. It may be necessary on occasion for the track owner to reduce the class of track to Class 5 or below. When this occurs, the requirements for the lower classes (1–5) will apply.

Comments: No comments were received pertaining to this section.

Final rule: FRA decided to delete the proposed subsection (d), which discussed directed service by the Surface Transportation Board, because this provision is not needed in the high speed context.

FRA decided to add a new subsection (d) of this section to include in the category of those responsible for compliance with the track standards those who perform the function of complying with the standards, not just the track owner. This is consistent with the counterpart regulation for Classes 1 through 5 track in § 213.5(f). It conforms to the authority given FRA by the statute. *See* 49 U.S.C. 21301 and 1 U.S.C. 1.

Section 213.305—Designation of Qualified Individuals; General Qualifications

Proposed rule: Work on or about a track structure supporting qualified high speed passenger trains demands the highest awareness of employees about the need to perform work properly.

A person may be qualified to perform restorations and renewals under this subpart in three ways. First, the person may combine five or more years of supervisory experience in track maintenance for track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training. Second, a person may be qualified by a combination of at least one year of supervisory experience in track maintenance of Class 4 or higher, 80 hours of specialized training or in a college level program, supplemented with on-the-job training. Under the third option, a railroad employee with at least two years of experience in maintenance of high speed track can achieve qualification status by completing 120 hours of specialized training in maintenance of high speed track, provided by the employer or by a college level engineering program, supplemented by special on-the-job training.

Similarly, a person may be qualified to perform track inspections in Classes 6, 7, 8 and 9 by attaining five or more years of experience in inspection in track Class 4 or higher and by completing a course taught by the employer or by a college level engineering program, supplemented by special on-the-job training. Or, the person may be qualified by attaining a combination of at least one year of experience in track inspection in Class 4 and higher and by successfully completing 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented with on-the-job training. Finally, a person may be qualified by attaining two years of experience in track maintenance in Class 4 and above and by successfully completing 120 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the inspection of high speed track. The third option is intended to provide a way for employees with two years of experience in the maintenance of high speed track to gain the necessary training to be qualified to inspect track.

For both categories of qualifications, the person must have experience in Class 4 track or above. To properly maintain and inspect Class 4 track or higher requires a level of knowledge of track geometry and track conditions that are not as readily obtained at lower classes. Persons who are qualified for high speed track must know how to work, maintain, and measure high quality track. Experience in Class 4 track is established as a lower limit to provide a pool of candidates, that may be drawn from freight railroads, who would provide the necessary experience on well-maintained track.

This section also includes specific requirements for qualifications of persons charged with maintaining and inspecting CWR. Training of employees in CWR procedures is essential for high speed operations. Each person inspecting and maintaining CWR must understand how CWR behaves and how to prevent track buckles and other adverse track reactions to thermal and dynamic loading.

Comments: No comments were received pertaining to this section.

Final rule: A minor change to subsection (e) has been made to clarify that records must be maintained for those employees qualified to supervise movements over broken rails.

Section 213.307—Class of Track: Operating Speed Limits

Proposed rule: For several years, passenger service on the Northeast Corridor has operated at 125 m.p.h. under conditional waivers granted by FRA. Amtrak has established specific procedures for this category of speed from which the railroad industry has accumulated valuable knowledge about track behavior in this speed range. The speed of 125 m.p.h. is the natural boundary for the maximum allowable operating speed for Class 7 track. Because trainsets have operated in this country at speeds up to 160 m.p.h. for periods of several months under waivers for testing and evaluation, the maximum limit of 160 m.p.h. is established for Class 8. In the next several years, certain operations may achieve speeds of up to 200 m.p.h. Class 9 track is established for this possibility. The exceptions for the maximum allowable operating speeds for each class of track parallels the standards for the lower classes, except that a speed of 10 m.p.h over the maximum intended operating speeds is permitted during the qualification phase per Section 213.345.

Although high speed rail is most often considered in terms of passenger travel, non-passenger high speed train service (*e.g.*, the mail trains operated by Amtrak on the Northeast Corridor) is also a possibility. All equipment, whether used for passenger or freight, must demonstrate the same vehicle/track performance and be qualified on the high speed track. Hazardous materials, except for limited and small quantities, may not move in bulk on trains operated at high speeds. The limitations noted are similar to those involved in commercial passenger and freight air travel.

Comments: The Florida Overland eXpress commented that a reference to that project in the section-by-section analysis of the NPRM may seem to erroneously suggest that the requirements established for Class 9 track apply to that project.

Final rule: FRA agrees that the language in the preamble to the NPRM may have been confusing. This analysis clarifies that Subpart G is not applicable to the Florida Overland eXpress. The proposed rule itself did not reference that proposed operation, so the language in the rule remains unchanged for the final rule.

FRA does not presently foresee authorization of mixed passenger and conventional freight operations above 150 m.p.h. Accordingly, passenger equipment safety standards, as proposed, address equipment for speeds only to 150 m.p.h. FRA expects to handle service above 150 m.p.h. through rules of particular applicability. Nevertheless, standards contained here are useful benchmarks for future planning with respect to track/vehicle interaction, track structure, and inspection requirements.

Section 213.309—Restoration or Renewal of Track Under Traffic Condition

Proposed rule: This section addresses two elements of concern: (1) that the stability of the track structure not be significantly degraded and (2) that roadway worker safety not be compromised. For restoration under traffic conditions, this section allows only track maintenance that does not affect the safe passage of trains and involves the replacement of worn, broken, or missing components or fastenings or minor levels of spot surfacing.

Comments: No comments were received pertaining to this section.

Final rule: The section as proposed is adopted in this final rule.

Section 213.311—Measuring Track Under Load; section 213.317 Waivers; section 213.319 Drainage

Proposed rule: Proposed language for these sections is identical to the similar sections for track Classes 1 to 5 (§§ 213.13, 213.17, and 213.33).

Comments: Refer to the corresponding sections in classes 1–5 for comments.

Final rule: The sections as proposed are adopted in this final rule, with minor language changes to § 213.317.

Section 213.321—Vegetation

Proposed rule: These sections are identical to the corresponding sections in the standards for track Classes 1 though 5.

Comments: Refer to the corresponding sections in classes 1–5 for comments.

Final rule: The section as proposed is adopted in this final rule.

Section 213.323—Track Gage

Proposed rule: This section introduces limits for change in gage. Analysis has shown that an abrupt change in gage can produce significant wheel forces at high speeds. The minimum and maximum limits for gage values Classes 6, 7, 8 and 9 were set to minimize the onset of truck hunting.

Comments: No comments were received pertaining to this section.

Final rule: With the exception of one minor change, the section as proposed is adopted in this final rule. The title of the heading in the fourth column of the gage table was changed from "the change of gage in 31 feet" to "the change of gage within 31 feet" to clarify that the change of gage parameter applies between two points anywhere within a 31-foot distance along the track, including two points exactly 31 feet apart.

Section 213.327—Alinement

Proposed rule: Uniformity is established by averaging the offset values for nine points centered around each point along the track at a spacing specified in the table. Uniformity defined in this way applies anywhere—curves, tangent segments, and spirals. Analysis has shown that points in transition areas such as around the "point-of-spiral-to-curve" can be included in this averaging technique. No distinction is made as to where the uniform calculation takes place. Tangent, curve, and spiral transitions have historically been difficult to determine in the field. The use of the uniformity filter obviates the need to make determinations based on the identification of these transitions.

This section provides three chord lengths for different types of vehicle/track interaction modes. Chords of 31-, 62-, and 124-foot lengths provide control of single and multiple defects in the wavelength bands most likely to affect vehicle dynamics and ride quality.

The 62-foot chord was selected because of its proximity to the truck center spacing of most high speed passenger vehicles. In phase carbody resonance modes such as bounce, roll and sway are most affected by track anomalies with a wavelength that is near the truck center spacing. Control of track geometry limits based on the 62-foot chord will help reduce the magnitude of such carbody motion. This chord also is predominantly used for track Classes 1 through 5 and is familiar to track inspection and maintenance personnel.

The 31-foot chord controls short wavelength defects that can result in high wheel forces over a short portion of track. These forces may not produce excessive carbody motion, yet their action on the wheels and truck may cause derailment. Most foreign high speed railroads use a 10-meter chord which is approximately equal in length to the 31-foot chord required in this section.

To control longer wavelengths, most foreign high speed railroads use a 30- or 40-meter chord. The 124-foot chord, which is approximately equal to a 40-meter chord, provides a means to locate and measure longer wavelength track anomalies. These long-wavelength

anomalies provide dynamic input to the high speed rail vehicles and can excite carbody resonance modes at high speeds. Excessive carbody motion can lead to poor carbody accelerations and wheel/rail forces, and in the extreme, may also cause derailment.

Addition of this chord length allows measurement of anomalies with wavelengths up to 300 feet. The Japanese National Railway adopted a 40-meter chord after recent speed increases on its Tokaido line. Research and testing indicated a stronger correlation between carbody motion and track geometry limits based on 40-meter mid-chord offsets.

Comments: No comments were received pertaining to this section.

Final rule: The final rule includes two changes to limits shown in the alinement tables. The permissible limit for track Class 9 for a single alinement deviation for a 124-foot chord is changed from one-half inch to three-quarters inch, and the Class 9 limit for three or more non-overlapping deviations for a 124-foot chord is changed from three-eighths to one-half inch. The limits for these two parameters shown in the NPRM were overly conservative, based on the recommendations of the technical experts who worked with the task group that developed the proposed high speed standards. These recommendations are contained in the report, "Track and Vehicle-Track Interaction Safety Assurance for U.S. High Speed Rail", July 1997, which is contained in the public docket for these proceedings.

Section 213.329—Curves, Elevation and Speed Limitations

Proposed rule: The determination of the maximum speed that a vehicle may operate around a curve is based on the degree of curvature, actual elevation, and amount of unbalanced elevation where the actual elevation and curvature are derived by a moving average technique. This approach is as valid in the high speed regime as in the lower classes. The moving average technique recognizes the steady state (one or two second duration) nature of the Vmax formula.

The maximum operating speed for each curve is determined by the Vmax formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

where:

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).

E_u = Unbalance elevation or cant deficiency

D = Degree of curvature (degrees).

While the cant deficiency proposed in Classes 1 through 5 is three or four inches, cant deficiencies proposed for qualified high speed train are considerably higher. FRA has granted waivers for up to nine inches for revenue service and up to twelve inches for testing for qualified equipment. Higher cant deficiencies are allowed for high speed trains that may include tilting systems. The qualification testing will ensure that the vehicle will not exceed the vehicle/track safety performance limits set forth in this subpart when operating at these higher cant deficiencies.

In order to qualify the vehicle at higher cant deficiencies, the railroad must provide technical testing information using the same procedures that have been used in past years for waivers for higher cant deficiencies. This procedure is commonly called the "static lean test" where the vehicle is elevated on one side and wheel loads are measured and the roll angle is determined. Based on acceptable testing information and other technical submissions, FRA will approve the higher cant deficiencies for the specific vehicle type.

The maximum crosslevel on the outside of a curve is established at seven inches. Elevation in excess of that amount presents a safety consideration for freight trains with high centers of gravity, operating at lower speeds in the curve.

Comments: The Bombardier GEC Alsthom Consortium (Bombardier/GEC) commented that this section permits FRA to approve a higher of level of cant deficiency, but the same option does not exist for track classes 1 through 5. Furthermore, Bombardier/GEC urged that the requirements concerning the roll angle between the floor of the vehicle and the horizontal should be deleted and explained that this method was not valid for non-tilting equipment.

Final rule: FRA agrees that the concept of the roll angle would not apply to non-tilting power cars and has changed paragraphs (d)(1) and (2) to apply the requirements for the roll angle only to passenger-carrying equipment. FRA has changed § 213.57 in track Classes 1 through 5 to address the commenter's concern.

FRA has deleted footnote 2 from paragraph (f) of this section because it is no longer necessary. If a waiver previously has been granted to the railroad to operate at a higher level of cant deficiency, the railroad or FRA should have the static lean and other information readily available for consideration of FRA approval required under this section. This will allow the present waiver, including conditional requirements not necessarily compatible with Subpart G, to be replaced with an FRA approval process which incorporates all necessary requirements under this new subpart.

FRA considered the issue of the difference between a curve that has been introduced in high speed track as a result of maintenance or geometry degradation and a curve that was introduced by design. In either case, superelevation may or may not be present and trains may experience an unbalanced condition. FRA believes that the deviations from uniform profile and uniform alinement, as outlined in sections 213.331 and 213.327, will not preclude longer wavelength misalinements on the order of 200 feet or greater that resemble the characteristics of a curve, from being treated as a curve for which the unbalance formula defined in this section will be applied.

Section 213.331—Track Surface

Proposed rule: The chord lengths in the table are selected for the same reasons discussed in § 213.327 (alinement). The multiple chords measure different surface anomaly wavelengths.

The surface table addresses both single and multiple events. Studies have shown that the smaller limits are necessary when surface anomalies repeat themselves three more times over the specified chord length. The parameter commonly called "warp," the difference in crosslevel between any two points, does not require a specific limit for repeated warp conditions at high speeds.

Comments: Bombardier/GEC and the French Ministere de l'Equipment, des Transports et du Logement separately expressed concerns that the limits for track geometry have been extended from the present class 6 standards, permitting more track defects in the high speed track classes. As an example, Bombardier/GEC said that the proposed rule would permit a single 1.25 inch mid-ordinate offset on a 62 ft. chord for a profile condition, compared to the current requirement of 0.5 inch. In addition, Bombardier/GEC questioned why the difference in crosslevel between two points less than 62 feet apart is lower for Classes 4 and 5 track than it is for Classes 6 through 9 track. Bombardier/GEC urged that the values for all the geometry limits be "verified by industry" before the rule is

promulgated. The Bombardier/GEC also pointed out that the titles in the tables defining surface requirements should not have the "inches" in them since class of track is not defined in inches.

The AAR commented that the NPRM included an inconsistency between § 213.63 for track Classes 1 to 5 and § 213.331 in regard to repeated low joints. The AAR suggested that footnote 2 to the warp parameter (the difference in crosslevel between any two points less than 62 feet apart) should apply to § 213.331 for track Classes 6 through 9. The AAR notes that a condition which is a defect in track Classes 1 through 5 should also be a defect in the higher track classes.

Final rule: FRA has adopted the proposed geometry standards except for a few changes in the limits for the track profile parameter. The changes in the profile parameters are based on a recent study conducted at the VNTSC.

FRA believes it is crucial to revise the standards for Class 6 track. Years of experience by Amtrak on the Northeast Corridor indicate a lack of correlation between the former Class 6 standards and adverse vehicle responses. Adverse vehicle response occasionally occurred on track that was in compliance; on the other hand, track that was not in compliance sometimes did not contribute to any adverse vehicle response.

In response to the concern that the "warp parameter" permits a greater difference in crosslevel between any two points less than 62 feet apart for the higher classes than is permitted in the lower classes, FRA notes that the limit established for Classes 6 through 9 track, one and one-half inches, is the same limit established for Class 5 track. Therefore, FRA does not believe that a discrepancy exists. In addition, FRA believes the format in the surface tables in this section does not need modification since it is similar to the surface table in § 213.63 for the lower classes, a format that has been used in the track standards for many years.

The geometry standards are based on the recommendations of a panel of experts who conducted extensive studies, reviewed foreign practice, and recommended to the RSAC the safety limits shown in the proposed rule. The recommendations of this panel are contained in a working paper dated July, 1997, and entitled "Track and Vehicle Interaction Safety Assurance for U.S. High Speed Rail." The working paper is part of the docket for this proceeding. The proposed high speed standards were based on the principle that the high speed track and the equipment operating on high speed track are an integral system.

Following the publication of the NPRM, the VNTSC completed a report entitled "Evaluation of Proposed High Speed Track Surface Geometry Specification", dated November 10, 1997, which is in the docket of these proceedings. The study describes an evaluation of the responses of different high speed locomotive designs to track profile geometry variations. The working paper focuses on a comparative analysis of high speed locomotive designs with carbody-mounted traction motors and locomotive designs with truck-mounted traction motors. The minimum amplitudes of track profile variations required to cause excessive vertical accelerations in the operator's cab and to cause suspension bottoming are compared with the maximum amplitudes prescribed in the proposed high speed standards. The analysis shows that a locomotive design with truck-mounted traction motors requires an approximately 33 percent smaller track profile variation amplitude to cause excessive vertical accelerations than a locomotive design with carbody-mounted traction motors. These results indicate that a locomotive with truck-mounted traction motors may exceed the proposed minimum safety limits for a single profile event that were proposed in the NPRM for Subpart G.

In light of those findings, FRA has adopted the proposed surface limits contained in the NPRM, except that the geometry limits for profile are reduced, based on the results of the VNTSC study. This final rule requires that the deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not exceed one inch for track Classes 6 and 7. The deviation from uniform profile on either rail at the midordinate of a 62-foot chord has now been set to one inch for track Classes 6, 7 and 8 and three-quarters of an inch for track Class 9. Similarly, for three or more non-overlapping deviations in track surface, each deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not exceed three-quarters of an inch for track Classes 6 and 7. Also, for three or more non-overlapping deviation in track surface, each deviation from uniform profile on either rail at the midordinate of a 62-foot chord has been changed to three-quarters for track Classes 6, 7 and 8 and one-half inch for track Class 9.

FRA concurs with the comments made by the AAR in regard to repeated low joints. For consistency with § 213.63, footnote two with a minor modification has been added to the table in § 213.331(a).

Section 213.333—Automated Vehicle Inspection Systems

Comments were received from Amtrak and from Bombardier/GEC in regard to the proposed requirements for automated measurement systems. These systems include the track geometry measurement system, the gage restraint measurement system, and the systems necessary to monitor vehicle/track interaction (acceleration and wheel/rail force requirements). Because of the complexity of these systems and the technical nature of the comments, the following discussion addresses each automated measurement system separately in the order of the paragraphs in the proposed rule.

Track Geometry Measurement System (TGMS), Paragraphs (a) Through (g)

Proposed rule: Railroads that operate trains at speeds above 110 m.p.h. universally employ automatic track geometry measuring systems to generate data to point out train safety hazards in the track structure. Reliance upon only visual inspections to locate small track irregularities is difficult. In France, track geometry measuring vehicles are operated quarterly over high speed lines for the purpose of collecting track maintenance data.

Comments: Comments were received concerning the track geometry system.

Final rule: No changes to paragraphs (a) through (g) were made in the final rule.

Gage Restraint Measurement System, Paragraphs (h) and (i)

Proposed rule: The GRMS is primarily used on timber-tied track of certain freight railroads, to evaluate the effectiveness, on a continuous basis, of rail/tie fastening systems. This section requires the use of GRMS in Classes 8 and 9 to measure the gage restraint of the track, including the strength of the ties and the ability of the fastenings to maintain gage. Specified safety limits were established after testing on the Northeast Corridor where the track is predominately concrete-tied with timber tie turnouts. GRMS on concrete ties is effective in identifying defective ties and conditions with missing fasteners or a relaxation of toe load of gage-side rail fasteners. GRMS is required in Classes 8 and 9 to measure the resistance of the track to forces generated by wheel flanging in the gaging space. The use of the GRMS is necessary to insure sufficient gage restraint at the gage limits set to control truck hunting.

Comments: Bombardier/GEC commented that the GRMS requirements are unnecessary. It stated

that the GRMS could be a beneficial tool when used to inspect lower classes of track built with wooden ties, and any requirement for regular GRMS inspection should be limited to lower track classes and tracks with wooden ties where a cost/safety benefit can be shown.

Final rule: FRA does not agree with the recommendation that the GRMS be restricted to timber-tied track. While most of the industry's GRMS experience has been on timber-tied track, FRA and Amtrak jointly conducted a program to evaluate the performance of FRA's GRMS on the Northeast Corridor, a route with large numbers of concrete ties. This joint evaluation program indicated that the GRMS is an important safety tool for the measurement of gage restraint in concrete ties, as well as timber ties. The evaluation program also concluded that the optimum GRMS safety criterion for concrete ties is the gage-widening ratio (GWR) which is based on the unloaded track gage, loaded track gage and actual lateral load applied.

The GWR limit to the high speed standards is a completely different concept than the application of the GRMS technology discussed for the lower track classes. This preamble describes various proposals for implementation of GRMS technology for lower track classes, such as the use of a GRMS to supplant certain crosstie and fastener requirements in the track safety standards. While the GRMS is new to the high speed environment, FRA concludes that GRMS inspections in the higher classes is important to confirm the safety of crossties and fasteners. The GRMS is an important tool which has been proven to identify missing fasteners and help locate other conditions that can affect the ability of both timber and concrete crossties to maintain track gage.

Paragraphs (h) and (i) are unchanged from the proposed rule with two exceptions. Since there is no requirement to calculate Projected Loaded Gage (PLG24) in Classes 8 and 9, the reference to PLG 24 has been removed from the final rule. Several other minor word changes have been made in the language of the rule text to agree with the current language being proposed by the GRMS Task Group.

Vehicle/Track Safety Measurement Systems, Paragraph (j)

Proposed rule: The proposed rule required functional carbody and truck frame accelerometers on at least two vehicles of every train in track Classes 8 and 9. The track owner would be required to have in effect written procedures when these devices indicate a possible track-related condition.

Comments: Both Amtrak and Bombardier/GEC in separate comments state that the requirements in paragraph (j) are unnecessary. Both commenters objected to the requirement for accelerometers on every train, except for lateral truck frame accelerometers, and also objected to the requirement for written procedures for the notification of track personnel. The commenters argued that such a requirement would likely create significant availability problems for various operators due to the reliability of such permanently installed equipment.

In its comments to the docket, Amtrak re-evaluated an earlier endorsement of a requirement for carbody accelerometers on every train and now recommends that this paragraph be replaced with a requirement for written procedures when on-board crews report indication of a possible track-related condition. Amtrak said that it had earlier assumed that these monitoring systems would be autonomous "black boxes" that would be on each train and report exception to the engineer or directly to the dispatcher. Amtrak said that further investigation into the application of this requirement raised doubts about the necessity for the frequency of the monitoring as well as the ability of an operator to ensure compliance with that frequency because "track deterioration is a slow process occurring over long periods of time." In addition, Amtrak stated that it has had in place for years a process by which engineers report rough track when they encounter it.

Final rule: FRA has received widely differing opinions about the use of accelerometers on daily trains. Some experts point out that accelerometers on every train would be extremely useful to locate track conditions that may need correction. Other experts have differing opinions. The French National Railway (SNCF), for example, employs lateral truck-mounted accelerometers to address truck hunting on every train, but uses vertical and lateral carbody accelerometers only on a vehicle which inspects about twice each month. Those who advocate accelerometers on two cars in every train believe that they may indicate a track-caused response if both vehicles exhibit similar readings. On the other hand, if only one vehicle shows a high acceleration, the cause may be attributed to the dynamics of that vehicle only, not the track. Some experts believe that a requirement to equip every train with carbody and truck frame accelerometers would be costly to implement and would have questionable safety benefits.

However, many experts believe that a requirement for carbody and truck frame accelerometers on one train per day would accomplish several important safety goals that can not be achieved with a periodic program such as the one on the SNCF. The principal advantage is that conditions such as a culvert this is settling would be identified before the next periodic inspection.

While FRA agrees with the commenters that lateral and vertical accelerometers on every train would be unnecessary and that track does generally deteriorate slowly, FRA believes that some undesirable track geometry conditions may occur between periodic inspections for geometry and vehicle/track safety. The engineer's subjective perception of rough track conditions would be enhanced with available technology. FRA concludes that a requirement for functioning carbody and truck-mounted accelerometers on at least one train per day is needed to address those conditions that may occur on a daily basis, such as a culvert which has settled or a track condition that may be inadvertently introduced during track repair. These conditions may not be noticeable to a locomotive engineer.

The final rule is changed to require that at least one vehicle in one train per day operating in Classes 8 and 9 shall be equipped with functioning on-board truck frame and carbody accelerometers. Each track owner shall have in effect written procedures for the notification of track personnel when on-board accelerometers on trains in Classes 8 and 9 indicate a possible track-related condition. The implementation of this requirement and the extent of human involvement in the process and the specific acceleration levels that would trigger notification of track personnel is being left up to the railroad.

Paragraph (k)

Proposed rule: In paragraph (k), the proposed rule requires that for track Classes 7, 8 and 9, an instrumented car having dynamic response characteristics representative of other equipment assigned to service, or a portable device that monitors on-board instrumentation on trains, shall be operated over the track at the revenue speed profile at least twice within 60 days with not less than 15 days between inspections. The instrumented car or the portable device shall monitor vertically and laterally oriented accelerometers on the vehicle's floor level and lateral truck-mounted accelerometers. If the carbody lateral, carbody vertical, or truck frame lateral safety limits in this section are

exceeded, speeds will be reduced until these safety limits are not exceeded.

Comments: Both Amtrak and Bombardier/GEC were generally supportive of this paragraph which requires periodic measurements of truck frame and carbody accelerations. Amtrak recommended that two vehicles be used, rather than one, and Bombardier/GEC questioned the requirement that the accelerometers be mounted above the axle where they would be subjected to damage from snow, ballast, and debris. Bombardier/GEC also stated that the rule should make clear what the remedial action should be taken when these limits are exceeded.

Final rule: FRA agrees with the comments regarding the placement of the accelerometers and has revised the paragraph to clarify the remedial action that must be taken when these safety limits are exceeded. Paragraph (k) is changed to remove the requirement that the accelerometers on the truck frame shall be mounted "directly above the axle." Instead the accelerometers must be mounted on the truck frame. While Amtrak's recommendation that two vehicles be equipped with the accelerometers, FRA concludes that one inspection vehicle when combined with the daily monitoring of accelerometers and the other inspection requirements in the rule, will provide the necessary level of safety. For clarification, the rule is changed to require that "if the carbody lateral, carbody vertical or truck frame lateral safety limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded." These changes clearly indicate that when the vehicle/track interaction safety limits are exceeded on the inspection vehicle, the speeds of all trains, not just the test train, shall be reduced until the source of the exception is corrected, whether track or vehicle-related.

Paragraph (l)

Proposed rule: In this proposed section, paragraph (l) would require, for track Classes 8 and 9, a car equipped with instrumented wheelsets to be operated annually to ensure that the wheel/rail force safety limits are not exceeded.

Comments: Bombardier/GEC stated that the rule as proposed is not clear about whether the requirement for an annual measurement of wheel/rail forces using instrumented wheelsets is intended to "re-qualify the rolling stock, or verify the quality of the track." Bombardier/GEC stated that, based on the practices of all operators of high speed equipment around the world, there is no reason to re-qualify a vehicle design once it has been properly qualified. Bombardier/GEC also commented that if the intent of the measurement is to verify the condition of the track, it will be less effective as an indicator than information obtained from the other requirements in the rule that are specifically included for that purpose and which are conducted more frequently. Bombardier/GEC also recommended a few technical changes to the table of vehicle/track interaction safety limits.

Final rule: The commenter recommends that the measurement of wheel/rail forces is only necessary during the qualification period and is not necessary to be employed for periodic inspections. The SNCF relies on accelerometers for the purpose of confirming the safety of its high speed system; however, other high speed railroads use instrumented wheelsets on a regular basis to monitor wheel/rail forces. The final rule establishes safety criteria for both accelerometers and wheel/rail forces that must be monitored during the life of the system. FRA does not agree with the comment that accelerometer measurements alone will ensure safety.

The vehicle/track interaction safety limits are the cornerstone of the high speed standards. Vehicle/track interaction has critical consequences in railroad safety, and so establishing safe parameters and developing a measurement system to adhere to those parameters is highly important for any track safety program. There are several hazardous and unacceptable vehicle/track interaction events that are well-known in railroad engineering, and for the most part, may occur on existing high speed operations, including wheel climb, rail roll-over, vehicle overturning, gage widening, and track panel shift.

The safety limits contained in the Vehicle/Track Interaction Safety Limits table are derived from technical literature, years of research, experience by foreign railroads, and computer simulation and validation. They must not be exceeded either during the qualification phase required under § 213.345 or in the periodic measurement of accelerations and wheel/rail forces required in this section.

The minimum vertical wheel load safety limit is 10 percent of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry while stationary on level track. These safety criteria assure that no excessive wheel unloading is experienced by any wheel on the operating vehicle. Significant wheel unloading greatly increases the risk of derailment in the dynamic environment of a vehicle traveling at high speed.

The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail (L/V ratio) is limited by the Nadal formula. The limit on any wheel's L/V ratio ensures that the risk of a wheel climb derailment is minimized. The wheel flange angle (δ) referenced in the formula should correspond to actual measurements of wheel flange angle as provided by the requirements of the vehicle qualification testing specified in § 213.345.

The net axle lateral force exerted by any axle on the track should not exceed 50 percent of the static vertical load exerted by the same axle. This safety criterion ensures that no excessive track panel shift or misalinement is produced by the moving vehicle. For vehicles operating at high speeds, track panel shift can produce unsafe carbody and/or truck motion and, in the extreme, can cause derailment.

The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail must not exceed 0.60. This limit ensures that the risk of a rail rollover derailment is minimized.

The lateral carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.5 g. Carbody lateral accelerations above this limit reflect a very poor ride quality and a degraded track and/or vehicle condition.

The vertical carbody peak-to-peak acceleration (defined by the algebraic difference between the two extreme values of measured acceleration within a one-second duration) is limited to 0.6 g. Carbody vertical accelerations above this limit also reflect a poor ride quality and a degraded track and/or vehicle condition.

The Root Mean Square (RMS) of the lateral truck acceleration for any two-second duration is limited to 0.4 g. This safety limit ensures that no sustained truck hunting is experienced by the moving vehicle. Sustained truck hunting produces undesirable ride quality and significantly increases the risk of derailment. The RMS of the lateral truck acceleration must be calculated over a two-second window from which the mean value of the acceleration has been removed. The vertical truck zero-to-peak acceleration

is limited to 5.0 g. Exceeding this safety limit can indicate undesirable short wavelength track anomalies.

Ultimately, vehicle/track interaction safety is assured by controlling wheel/rail forces to safe limits. Appropriate limits for track geometry and vehicle response acceleration provide strong indications of the likely wheel/forces which would be produced by operating trains. Use of an instrumented wheelset also provides a level of safety assurance for new and unusual vehicle designs that differ from the conventional vehicle dynamic models that were used to develop the track geometry and vehicle/track interaction limits.

FRA believes that an annual inspection using functioning instrumented wheelsets must be implemented as part of a high speed inspection strategy that includes visual inspections, geometry car inspections, periodic carbody and truck-mounted accelerometer measurements, and other inspections deemed necessary.

The measurement of wheel/rail forces and accelerations is necessary to confirm that the vehicle/track system is performing within safe limits. The Japanese National Railway, for example, employs instrumented wheelsets to measure wheel/rail forces at a frequency of approximately every three months. The purpose of the periodic measurement of wheel/rail forces required in this paragraph is to monitor, or in a sense "requalify," the vehicle/track system, not to "requalify" only the track or only the vehicle design. Neither the track nor the vehicles on the high speed track can be considered in isolation; they must be monitored together as a system.

The final rule contains a few changes to the table of vehicle/track interaction safety limits. A 25 Hz filter is specified so that important high speed events will not be filtered from the data and the location of truck frame accelerometers is changed in Footnote 3.

Paragraph (m)

Proposed: Paragraph (m) requires the track owner to maintain a copy of the most recent exception printouts for the inspection required under paragraphs (k) and (l) of this section.

Comments: No comments were received concerning this paragraph.

Final rule: The paragraph as proposed is adopted in this final rule.

Section 213.335—Crossties

Proposed rule: Various types of crossties may be installed in high speed track provided that the ties maintain the proper gage, surface and alinement. Slab track (track imbedded in concrete) or other construction may also be used if the construction complies with the requirements of this section. Because of the wide use of concrete ties in high speed track throughout the world, this section establishes safety requirements for concrete ties.

The requirements for crossties in this subpart differ from those in the corresponding section for crossties in Classes 1 through 5. For non-concrete-tied construction, the requirements for ties parallel those of the lower standards except that permissive lateral movement of tie plates is set at ⅜ inch instead of ½ inch and a requirement for rail holding spikes is added.

For concrete-tied track, effective ties must not exhibit the known failure modes listed. These failure modes were derived largely from experience in the Northeast Corridor. The number and distribution requirements of both non-concrete ties and concrete ties is more stringent than the requirements for the lower classes. For example, 14 effective concrete crossties are required in Class 6, and 16 effective concrete ties are required in Classes 7, 8 and 9 in each 39-foot segment of track. For both concrete and timber construction, a minimum number of non-defective ties is specified on each side of a defective tie.

Comments: The AAR commented that a discrepancy exists in that paragraph (e) is inconsistent with the required location of crossties at rail joint locations for lower speed operations covered by § 213.109.

Final rule: Review of this section also reveled a typographical mistake which is being corrected; in paragraphs (c)(6) and (d)(6), "Able" is changed to "So unable." The discrepancy was inadvertent and has been corrected. The measurement is changed from 25 inches to 24 inches in paragraph (e) to make this subsection consistent with the requirements for the lower track classes.

Section 213.337—Defective Rails

Proposed rule: The requirements for the identification of rail flaws and appropriate remedial action are valid in high speed track classes as well as the lower track classes. This section is unchanged from the standards for the lower classes except that language references to specific lower classes are deleted as unnecessary. Surface conditions such as corrugation, shelling, spalling and checking are not included in the high speed rail defect table since these conditions, if they were to progress to a severe level, would contribute to dynamic loading conditions that are addressed by the requirements for vehicle/track interaction in § 213.333. The flattened rail head is especially important to identify in high speed track because of the adverse effect on track geometry caused by this short anomaly in the surface of the rail head.

Comments: No comments were received pertaining to this section.

Final rule: To improve clarity, definitions were added and a small change was made to include brackets around some items in the rail flaw table so that this section is identical to the corresponding section in the lower track classes.

Section 213.339—Inspection of Rail in Service

Proposed rule: A continuous search for internal rail defects must be made of all rail in track in track Classes 6, 7, 8 and 9 at a frequency of twice per year. This requirement is consistent with the frequency used on Amtrak's Northeast Corridor (essentially, Class 6 and 7) and as well as the approach used in France which inspects rails twice a year.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.341—Initial Inspection of New Rail and Welds

Proposed rule: This section provides for the initial inspection of new rail, either at the mill or within 90 days after installation, and for the initial inspection of new welds made in new or used rail. It also provides for alternatives for these inspections. Compliance with the initial inspection of new rail and welds may be demonstrated by in-service inspection, mill inspections, welding plant inspections, and inspections of field welds.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.343—Continuous Welded Rail (CWR)

Proposed rule: As with CWR for the lower classes of track, FRA will review the railroad's written procedures for the installation, adjustment, maintenance and inspection of CWR, and training for the application of these procedures.

Comments: No comments were received concerning this section.

Final rule: The final rule is unchanged from the proposed rule for this section.

Section 213.345—Vehicle Qualification Testing

Proposed rule: All rolling stock, both passenger and freight, must be qualified for operation for its intended class. This section "grandfathers" equipment that has already operated in the specified classes. Rolling stock operating in Class 6 within one year prior to the promulgation of this rule shall be considered as qualified. Vehicles operating at Class 7 speeds under conditional waivers prior to the promulgation of the rule are qualified for Class 7 at the current level of cant deficiency. This includes equipment that is presently operating on the Northeast Corridor at Class 7 speeds.

The qualification testing will ensure that the equipment will not exceed the vehicle/track performance limits specified in § 213.333 at any speed less than 10 m.p.h. above the proposed maximum operating speed. Testing at a maximum speed at least 10 m.p.h. above the proposed operating speed is required. The test report must include the design flange angle of the equipment that will be used for the determination of the lateral to vertical wheel load safety limit for the vehicle/track performance measurements required in § 213.333(k).

Subsection (d) requires the operator to submit an analysis and description of the signal system and operating practices to govern operations in Classes 7, 8 and 9. This submission will include a statement of sufficiency in these areas for the class of operation intended. Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

Comments: Bombardier/GEC stated that this part of the proposed rule is intended to be followed to qualify equipment types for their intended operation on a specific route, not to determine the operating limits of the equipment and track, as stated. Bombardier/GEC said that to achieve this, it is recommended that the words "* * * and conduct a test program sufficient to evaluate the operating limits of the track and equipment" be replaced with "* * * and conduct a test program sufficient to evaluate the safe operation of the equipment for the intended service."

Bombardier/GEC said that it is not practical to include a requirement to suspend the vehicle qualification tests at the speed where any of the vehicle/track performance limits in § 213.333 are exceeded. The qualification tests, according to Bombardier/GEC, should be completed to determine the safe operational limits for the equipment throughout the route. In addition, the specific location of all violations should be recorded and the condition of the track in those locations should be checked to determine if the non-compliance is related track or equipment.

Final rule: FRA believes that it is important not to emphasize the vehicle component in the qualification testing. The purpose of this section is not to conduct a test program to evaluate the safe operation of the equipment, but to qualify the vehicle/track system. The consideration of the high speed track and the vehicles together as an integral system is fundamental to the approach adopted in this final rule. To evaluate the system, a test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from acceptable Class 6 limits to the target maximum test speeds.

The commenter believes that the tests should not be suspended when the safety limits are reached. However, these safety limits are set at levels where continued operation could result in a derailment. FRA does not believe it would be prudent to continue the testing on that portion of track if these safety limits are reached. However, the rule is not intended to imply that all testing must be stopped. It can continue, but the locations where the limits are reached must be identified and test speeds may not be increased at those locations until corrective action is taken. This action may be an adjustment in the track, in the vehicle, or in both of these system components.

FRA has considered the consistency of this final rule with the proposed Passenger Equipment Safety Standards, **Federal Register**, September 23, 1997, and has changed § 213.345(b) to state that the testing will not exceed the wheel/rail force safety limits and the truck lateral accelerations specified in § 213.333 and the vertical and lateral carbody acceleration levels listed in (b)(1), (2), and (3). FRA believes the tighter ride quality limits in the proposed Passenger Equipment Safety Standards are more appropriate for a new system. However, as the equipment and track wear, those tighter ride quality limits which were used at the time of system qualification should be used to establish long-term maintenance levels, and the limits contained in § 213.333, which are minimum safety levels, should be used during the life of the system to monitor safety.

A small change has been added to § 213.345(a) which now states that all rolling stock types which operate at Class 6 and above speeds shall be qualified. This change emphasizes that trains which operate at Class 5 speeds or lower on the high speed line do not need to be qualified to operate on the high speed track.

The rule in § 213.345(e) requires the railroad to submit an analysis and description of the signal system and operating practices to govern operations in Classes 7, 8 and 9. FRA has modified § 213.345(f) to make it clear that trains shall not operate in revenue service until FRA has approved a maximum train speed and value of cant deficiency based on FRA's review of the test results and the other submissions by the track owner.

Section 213.347—Automotive or Railroad Crossings at Grade and Moveable Bridges

Proposed rule: There are no highway or railroad grade crossings on the Amtrak route between Washington, D.C. and New York City. Much of this line is operated by revenue passenger trains at 125 m.p.h. (Class 7 speeds). Highway crossings and railroad crossings at grade (diamonds) may not be present in Class 8 and 9 track.

Technology currently is being developed that would prevent inappropriate intrusion of vehicles onto the railroad rights-of-way. This technology involves the use of barrier systems with intrusion detection and train stop, as well as advance warning systems. Because the technology is under development, it would be premature to include specific requirements for barrier systems and related technology in this section. However, the railroad is required to submit for approval a description of the crossing warning system for each crossing.

Comments: No comments were received for this section.

Final rule: A minor addition was added to paragraph (b) to make it clear that trains shall not operate at Class 7 speeds unless an FRA-approved warning/barrier system exists on the track segment and all elements of that warning/barrier system are functioning.

The rule precludes the presence of highway grade crossings and rail-to-rail crossings for the highest speed operations, track Classes 8 and 9. Presently no highway-rail crossings exist on Class 6 track (on Amtrak and commuter railroads), although highway-rail crossings existed for several years on Class 6 track on the Northeast Corridor. FRA believes highway/grade crossings should be limited in the high speed regime. Where highway/rail crossings exist at higher speeds, the

railroad should install the most advance warning/barrier systems available.

FRA is continuing to conduct risk analysis related to treatments for high-speed crossings. To date, the analysis demonstrates that risk to a motorist is not likely to increase with increasing train speeds above 110 m.p.h. On average, collision frequency should not rise (although sight distance may be an issue in individual situations). Accident severity in the range of 80 m.p.h. is already so high that no further increase in the likelihood of fatal injury in the motor vehicle should result from increases in train speed.

However, FRA does not believe that sufficiently refined analytical techniques currently exist to predict the effect of increased speeds on damage to the passenger train through the initial collision, possible derailment, and possible secondary collisions—including interaction among the units in the consist. Collisions with heavy trucks, construction equipment and agricultural equipment are an issue of particular concern. FRA believes it is prudent to take the safe course and ensure against collisions by the most secure means possible, rather than risk the occurrence of a catastrophic event involving multiple fatalities to crew members and passengers.

Section 213.349—Rail End Mismatch

Proposed rule: Vertical or horizontal mismatch of rails at joints must be less than one-eighth of an inch for Classes 6 through 9. A more restrictive criterion is not necessary and would be impractical.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.351—Rail Joints

Proposed rule: This section is less permissive than its counterpart for the lower speed classes. Fracture mechanics tests and analyses demonstrate that there is no place in the high speed train operating regime for defective joint bars. The propagation rate of a crack large enough to be visible in a joint bar is unpredictable. Once a joint bar has ruptured, its companion joint bar is immediately in danger of overload. Upon discovery of a defective joint bar, the track owner must reduce the track class at the location of the defective bar and proceed according to the requirements of Subpart D.

Comments: No comments were received for this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.352—Torch Cut Rail

Proposed rule: This section mirrors the corresponding section (§ 213.122) track Classes 3 through 5. This provision prohibits future torch cutting of rails in high speed track, except for emergency situations. When a rail end is torch cut in an emergency situation, speed over the rail must not exceed the maximum allowable for Class 2 track.

For existing torch cut rails in Class 6 track, all torch cut rails must be removed within six months of the issuance of the final rule of this proceeding. If after six months from the issuance of the final rule of this proceeding any torch cut rail is discovered in Classes 6 through 9 track, it must be removed within 30 days, and speed over that rail must not exceed the maximum allowable speed for Class 2 track until it is removed.

Comments: No comments were received for this section.

Final rule: After further review, FRA determined that the proposed requirement in § 213.352(a)(2) requiring speeds in existing Class 7, 8 and 9 track to be reduced to Class 6 until a torch cut rail is replaced is unnecessary and has been deleted. For existing torch cut rail ends in Class 6 track, all torch cut rail ends, if any, must be removed within six months of this rule. Following the six-month period, if torch cut rail ends are discovered, train speeds over that rail must be reduced to the maximum allowable for Class 2 track until removed.

Section 213.353—Turnouts, Crossovers and Lift Rail Assemblies or Other Transition Devices on Moveable Bridges

Proposed rule: The requirements in this section are similar to those in the lower classes. Fastenings must be intact and maintained so as to keep the components securely in place. Each switch, frog, and guard rail must be free of obstructions that may interfere with the passage of wheels. Rail anchoring is required to restrain rail movement affecting the position of switch points and frogs.

Experience in this country with the maintenance of turnouts and crossovers in high speed territories is limited. The use of conventional switch and frog components in present-day 125 m.p.h. track can produce harsh vehicle response which, while not necessarily unsafe, is likely to be less and less welcome in the future, particularly at train speeds above 125 m.p.h.

Worldwide, the trend for turnouts and crossovers in high speed lines is toward reliance on long switch points and moveable point frogs. Amtrak has some limited experience with these features at fairly high train speeds, and the western coal railroads have a great deal of experience, especially with moveable point frogs, with turnout component performance in low speed, cumulative tonnage conditions. This section requires that the track owner, intending to operate trains at high speeds, to develop a turnout and inspection handbook for the instruction of employees involved in this work. Requirements for switches, frogs, and spring frogs that are present in the standards for the lower classes are not specifically listed, but will be addressed in the railroad's Guidebook.

The purpose of such a document is to encourage formal consideration of problems associated with inspection and maintenance of these track features and to establish a consistent system approach to the performance of related work.

Comments: No comments were received for this section.

Final rule: FRA has added a requirement for the inspection and maintenance of lift rail assemblies and other transition devices on moveable bridges. By introducing this requirement, FRA is not encouraging high speeds over moveable bridges. Currently, the highest speed over a moveable bridge is 70 m.p.h. However, in view of the 1997 accident over a lift rail assembly in New Jersey, FRA believes it necessary to introduce a requirement to inspect these transition devices in the high speed standards to address the potential that lift rail technology may change.

Section 213.355—Frog Guard Rails and Guard Faces; Gage

Proposed rule: The most restrictive practical measurements for these important parameters are included. The limits for guard check and guard face gage are set at a limit that permits minimal wear.

Comments: No comments were received for this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.357—Derails

Proposed rule: Because it is essential that railroad rolling stock be prevented from fouling the track in front of a high speed train, this section presents strict requirements for derails to be fully functional and linked to the signal systems.

Comments: A railroad supplier commenting on the NPRM suggested that derails also serve to prevent encroachment of main tracks by

locomotives, trains or maintenance-of-way equipment under power, and should not be excepted only because of grade characteristics. The commenter suggested that a better approach would be to permit this exception only where grade characteristics are favorable (significant ascent toward the main track) and where trains are not permitted to clear the main track. The commenter said that turnouts or crossings connecting to yard leads or branch tracks should not be excepted.

The commenter also recommended that the term "sidetrack" be better defined or described to make it clear that the term does not apply to other main tracks, sidings, or rail-to-rail crossings. The commenter was concerned that certain types of derails may be ineffective and described an accident that occurred several years ago when a train moving at over 50 mph passed over a derail. The commenter recommended that the rule include a definition of the term "derail" and suggested that turnouts, wheel stops, bollards, etc. may be equally effective in comparison to a conventional block or split point derail. The commenter expressed a concern that gates, chocks, skates, wire ropes, wood ties, etc., do not assure the same type of arresting action. The commenter asked for FRA's position on the removal of a length of rail, a pile of ballast or a bumper post.

The commenter said that the proposed requirement for each derail to be "interlocked" with the signal system should be modified and included in 49 CFR Part 236 which establishes requirements for hand-operated switches in ABS and TCS territory. The commenter said that the addition of circuit controllers to independent hand-operated derails in ABS will be costly and that such a requirement would tend to discourage voluntary installation of sidetrack derails on Classes 2 to 6 trackage.

The commenter also recommended that the term "interlocked" be replaced with the term "interconnected" and suggested that the phrases "interlocked", "maximally restrictive", "deployed", and "completely functional" are unfamiliar terms and invite confusion and disagreement. The commenter said that there would be little sacrifice of safety in allowing display of a "proceed at restricted speed" aspect on the main train when a sidetrack derail is not in the derailing position. Finally, the commenter suggested that this section be moved to the signal regulations at 49 CFR Part 236 because applicable sections in that part already apply to derails. For example, § 236.205(c) sets forth requirements for an independently operated fouling point derail equipped with switch circuit controller which is not in the derailing position.

Final rule: FRA does not believe it is necessary to move the entire section on derails to the signal rules at 49 CFR Part 236, because the subject of derails is appropriate for the track standards. However, FRA may wish to consider changes in Part 236 at a later date. FRA agrees with many of commenters recommendations.

The terms "industrial" and "sidetrack" as proposed may lead to confusion. FRA, therefore, has modified the rule to remove these terms and use terminology which is more common to the industry. Paragraph (a) now requires that each track, other than a main track, which connects with a Classes 7, 8 and 9 main track shall be equipped with a functioning derail of the correct size and type. The term "main track" has a familiar meaning in the railroad industry and is defined, for example in § 236.831(a) and § 240.7.

FRA believes the exception to the requirement for derails at locations "where railroad equipment, because of grade characteristics, cannot move to foul the main track" is reasonable. FRA believes it is not necessary to go beyond this exception to address every conceivable circumstance. FRA points out that § 213.361 requires the railroad to submit a right-of-way plan" for FRA approval. This plan must contain provision for the intrusion of vehicles from adjacent tracks.

The final rule under § 213.357(b) explains that a derail is a device which will physically stop or divert movement of railroad rolling stock or other railroad on-track equipment past the location of the device. Ineffective piles of ballast, wire ropes, chains, or similar methods are not sufficient. Other methods may be as effective as conventional derails in accomplishing the goal of preventing the railroad equipment from moving into the clearance envelope of the high speed main track.

Paragraphs (c) through (f) of this section mirror the derail requirements for the lower track classes in § 213.205. FRA agrees with the commenter's concern about the term "interlocked" because it refers to a particular arrangement of signals. FRA concurs with the commenter's concern that a requirement for derails to be connected to the signal system in Class 6 track would be costly and tend to discourage voluntary installation of derails. To address these concerns, paragraph (g) is changed to read that "each derail on a track connected to a Class 7, 8 or 9 main track shall be interconnected with the signal system." The term "interconnected" is consistent with the signal rules in § 235.205, which requires, in part, that circuits shall be installed so that each signal governing train movements into a block will display its most restrictive aspect "when an independently operated fouling point derail equipped with a switch circuit controller is not in derailing position."

Section 213.359—Track Stiffness

Proposed rule: Track must have sufficient vertical strength and lateral strength to withstand the maximum loads generated at maximum permissible train speeds, cant deficiency and lateral or vertical defects so that the track will return to a configuration in compliance with the track performance and geometry requirements of this subpart. It is imperative that the track structure is structurally qualified to accept the loads without unacceptable deformation.

The track's resistance to track panel shift is difficult to quantify. However, FRA believes that at a future date, it may be possible, based on ongoing research addressing track panel shift, to further refine the safety limit for the Net Axle L/V Ratio in the table of vehicle/track interaction safety limits in § 213.333. The present limit of 0.5 is based on an extrapolation of the Prud'homme limit and experimental data. An FRA sponsored research program is currently in place addressing the development of criteria and possible safety limits for track shift mitigation which are driven by the proposition that lateral loads generated by vehicles operating under maximum speed, cant deficiency, thermal loads, and initial line defect conditions should not cause the exception of an allowable deflection limit. Depending upon the specific track conditions and vehicle characteristics, permissible net axle lateral to vertical load ratios for an allowable deflection limit can be in the range of 0.4 to 0.6. Key influencing parameters are the track lateral resistance characteristics, tie/ballast friction coefficients, vehicle vertical axle loads, track curvature, thermal loads, and constant versus variable lateral axle loads.

Comments: No comments were received concerning this section.

Final rule: This section is unchanged from the proposed rule.

Section 213.361—Right-of-Way

Proposed rule: This section requires that the track owner to submit a barrier plan, termed a "right-of-way plan," to FRA for approval. The plan will include, at a minimum, provisions in

areas of demonstrated need to address the prevention of vandalism by trespassers and intrusion of vehicles from adjacent rights of way. A particular form of vandalism, the launching of objects from overhead bridges or structures, is specifically listed.

Comments: No comments were received concerning this section.

Final rule: The final rule is unchanged from the proposed rule for this section.

Section 213.365—Visual Inspections

Proposed rule: Visual inspections are considered to be an important component of the railroad's overall inspection program. The section largely parallels the requirements for the lower classes. The inspection requirements are twice weekly for Classes 6, 7 and 8 and three times per week for Class 9. Turnouts and crossovers must be inspected in accordance with the Guidebook required under § 213.353. The practice in France of operating a train at reduced speeds following a period with no train traffic is adopted in this section.

Comments: Bombardier/GEC said that the basis to limit the speed of trains in paragraph (f) to 100 m.p.h. after a traffic interruption of eight hours is not clear. Equipment currently is permitted to run at speeds of 110 m.p.h. on Class 6 track, and up to 125 m.p.h. on the Northeast Corridor on the first run of the day. The proposed rule would limit the speed of these trains to 100 m.p.h. after the track is upgraded to Class 8 or Class 9, if the disruption was greater than eight hours. Bombardier/GEC recommended that the rule require the speed to be reduced to Class 7 speeds if an eight-hour disruption in service occurs on Class 8 track.

Final rule: FRA believes the commenter may be misinterpreting the rule which requires that if no train traffic operates for a period of eight hours in track Classes 8 or 9, a train shall be operated at less than 100 m.p.h. before the resumption of the maximum authorized speed. FRA believes the requirement for one train to operate over the track is not burdensome and follows the practice on the SNCF lines for an early morning pilot train. The rule is unchanged from the proposed rule for this section.

Section 213.367—Special Inspections

Proposed rule: The requirements of this section are the same as those for the lower track classes except that the occurrence of temperature extremes is specifically listed as an event that requires a track inspection.

Comments: No comments were received concerning this section.

Final rule: The final rule for this section is unchanged from the proposed rule.

Section 213.369—Inspection Records

Proposed rule: The requirements of this section are the same as those for the lower track classes.

Comments: No comments were received for this section.

Final rule: FRA has made one small change in paragraph (f). The phrase "Each Track/vehicle Performance record" has been changed to "Each Vehicle/track interaction safety record." This change corresponds to the change in the title for the table of vehicle/track interaction safety limits in § 213.333.

Appendix A

Proposed rule: The NPRM proposed to add a curving speed chart based on four inches unbalance. For many years, the track standards included a curving speed chart based only on three inches unbalance. However, the NPRM proposed to allow qualified equipment to operate at curving speeds based on four inches of unbalance, making an additional chart necessary.

Comments: FRA received no comments on the new chart.

Final rule: FRA decided that inclusion of the new chart in Appendix A is necessary to accommodate the provision in the final rule which allows qualified equipment to operate at curving speeds based on four inches of unbalance.

Appendix B

Proposed rule: The NPRM stated that FRA would revise the schedule for civil penalty assessment as it found necessary. At the very least, the schedule would have to be revised to include civil penalties for the new subsections added to the Track Safety Standards. These would include penalties for §§ 213.4(e)(4) and (f) (Excepted track), § 213.119 (Continuous welded rail), § 213.122 (Torch cut rails), and most of the subsections in Subpart G.

Comments: FRA received no comments about the penalty schedule.

Final rule: Under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373), FRA is required to adjust civil penalties it administers to incorporate the effects of inflation. *See* 28 U.S.C. 2461 note.

FRA added penalties to the Schedule of Civil Penalties to accommodate the new subsections of the final rule. The amounts for the new penalties were chosen based on penalties that have been used in the enforcement of the Track Safety Standards for years. For instance, penalties for violations of most of the substantive subsections of the track standards are either $2,500 or $5,000, the higher penalty being reserved for the more serious violations. For those subsections under Subpart G that have counterparts in Subparts A through F, the new penalties are the same as those for their counterparts. After some consideration, FRA decided not to include generally higher penalties for high speed rail because there are currently few track owners to which Subpart G will apply. However, FRA will reconsider this decision in the future if experience demonstrates the need to assess higher penalties for Subpart G.

Regulatory Impact, Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. The final rule revising the Track Safety Standards is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February 26, 1979) because of substantial public interest and safety implications. 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, N.W., Seventh Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

Ordinarily, in conducting an analysis of the costs and benefits of a proposed or final rule, FRA gathers more extensive economic data than was made available in this proceeding. However, in light of the consensus in the Track Working Group and the majority vote of the RSAC members, FRA does not believe more data is necessary. FRA has relied principally on the recommendations and experience of the railroad industry and labor representatives who, through the RSAC process, helped develop this rule. The working group members provided valuable non-quantitative data on their preferences. Thus, their unanimous consensus on the contents of the rule allows FRA to conclude that the rule is cost beneficial. Although rail labor subsequently withdrew its support for this rulemaking, their objection to the rule did not relate to the finding that the rule is cost beneficial. Furthermore, the railroads, who will bear the burden of

the costs imposed by the rule, have continued to support the rule. In its conclusion, FRA finds that the net effect of the changes to the existing rule is an increase in safety and an increase in the burden on the railroads, but that the burden on the railroads from the changes is not likely to be as great as the benefit, although there was no way to quantify the magnitude on the net benefit.

The Track Working Group formed, reached a consensus on internal working procedures, and addressed the issues. Several issues were delegated to task groups, which are subgroups of the working group. The procedure remained the same. The task groups could make no recommendations until they had a consensus. The working group would not adopt any recommendation, even if a result of a consensus in the task group, until there was a consensus in the working group. The full RSAC would make no recommendation to the Administrator until there was a majority consensus in the full RSAC, even if there was a consensus in the working group.

An implication of this is that no entity represented would accept a consensus agreement, unless the entity he or she represented would be at least as well off after the agreement as it had been before. This analysis therefore uses as a fundamental assumption that there are no provisions which will impose drastic costs on any segment represented by members of the working group, and Pareto superiority of the revised rule over the current rules. Pareto superiority implies that no party would be willing to pay to return to the current standards, although some party might be indifferent between the current standards and the revised standard. There is no implication that this rule is Pareto optimal, although Pareto optimality has not been excluded. Were the rule Pareto optimal, there would not exist another possible set of rules which at least one party would be willing to pay to adopt, and the amount that party would be willing to pay would be sufficient, were it given to other parties, to induce them to agree to the set of rules. Nor is the final rule assumed to be optimal. Were it optimal the total net benefit would be maximized.

The guidance in E.O. 12866 is that we should select the rule with the maximum net benefit. We believe we have done that here, because no party who is burdened by the rule objected in comments to the docket following publication of the NPRM. What we know is that the revised rule is closer to the optimum than the current rules. The guidance in the Regulatory Flexibility Act is that we should adopt rules that are flexible, that fit in with how businesses actually conduct operations, and that are sensitive to the concerns of small businesses. Clearly the RSAC process does this. Had we adopted the suggestions of labor organizations objecting to the proposed rule in the full RSAC and in their comments to the docket, then we would have produced a rule with greater benefits and greater costs, which the FRA believes would have substantially lower net benefits than the proposed rule or this final rule.

Estimated Benefit of Changes to the Track Standards

In 1995, there were 827 reported train accidents from track-related causes, which caused about $62 million in damage to railroad property. These accidents also caused 17 injuries and the evacuation of approximately 1,000 people. *See* Tables 22, 65, and 27, Accident/Incident Bulletin 164, Calendar Year 1995, FRA 1996. If each accident resulted in $20,000 in miscellaneous costs, such as rerailing trains, providing emergency response, and legal costs, then the total miscellaneous cost would have been about $16 million.[1] If each injury cost $10,000, then the total injury cost would be about $170,000.[2] If each evacuation cost $1,000, then the total evacuation cost would have been about $1 million.[3] These costs are further documented in FRA's economic analysis, available in the public docket. The total for all of these costs would have been about $80 million.

The FRA believes it is conservative to estimate that these costs will be reduced by five percent, as the revision addresses virtually every accident cause found in the bulletin. That would provide an estimated benefit of about $4 million per year, or about $40 million in net present value over 20 years. This value may be significantly higher, as the average cost of accidents in certain categories targeted in the rule tends to be above average. For instance, broken rail derailments on main lines (internal rail flaw detection provisions) and accidents caused by buckled track (CWR provisions) tend to be higher-speed accidents with large railroad damage totals and greater potential for third-party impacts, such as evacuations and disruptions in adjacent transportation corridors.

Using reasonably conservative assumptions, it appears that the net burden on railroads will be less than $2 million per year, a very small number when compared to total rail revenues ($37.6 billion in 1995 for Class 1 railroads only). Railroads will receive a benefit in the form of greater certainty over the future of track safety standards as a result of their active participation in the RSAC process which provided the framework for the revised rule. They will also receive some benefit where existing provisions have been made less stringent.

It is not clear whether that benefit exceeds the burden, although it appears from the willingness of railroads to consent to the Track Working Group proposal that they would receive a net benefit. Of course, the railroads would be even better off if the provisions which burden them were removed and those which benefit them remained. Other members of the Track Working Group did not accept that proposal. In their comments, railroads agreed that they would rather have FRA implement the proposed rule as a whole than continue with the current standards, although they would prefer that the proposed rule changed certain provisions.

Federalism Implications

This final rule has been analyzed according to the principles of Executive Order 12612 ("Federalism"). It has been determined that these amendments to Part 213 do not have federalism implications. As noted previously, the U.S. Supreme Court, in *CSX* v. *Easterwood*, upheld Federal preemption of any state or local attempts to regulate train speed. Nothing in this notice proposes to change that relationship. Likewise, the addition to Part 213's requirement for vegetation maintenance near grade crossings is not intended to preempt any similar existing state or local requirements. The provisions that require railroads seeking to operate in Classes 8 and 9 to have a program addressing vandalism and trespassing are directed only to the railroads, and not to state or local governments. If a railroad is unable to provide an adequate program to address these issues, it will not be allowed to operate at Classes 8 and 9 speeds. For these reasons, the preparation of a Federalism Assessment is not warranted.

[1] Internal FRA estimates show that it would cost about $2,000 to rerail a single car, and that it costs about $10,000, conservatively, for an emergency response to a small derailment, and about $8,000 for about 80 hours of legal time at $100 per hour, which is also conservative as a measure of the resources used in response to a derailment.

[2] Based on an injury between AIS 1, minor, and AIS 2, moderate, on the Accidental Injury Severity scale, the society would be willing to pay between $5,400 and $41,850 to avoid the injury.

[3] Based on about $200 to relocate, house and feed an evacuee for one night, plus other costs to society, such as business, school and road closures, which come to about four times the individual evacuation cost.

Regulatory Flexibility Act

This notice contains a summary of a regulatory flexibility analysis (RFA) as required by the provisions of the Regulatory Flexibility Act at 5 U.S.C. 601–612. FRA completed a RFA as part of an economic analysis of costs and benefits, and placed of copy of the RFA in the docket for this proceeding.

1. Why action by the agency is being considered:

The Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (September 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994), requires FRA to revise the track safety regulations contained in 49 CFR Part 213. Now codified at 49 U.S.C. § 20142, the amended statute requires:

> (a) Review of Existing Regulations.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—
>
> (1) Procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;
>
> (2) The need for revisions to regulations on track excepted from track safety standards; and
>
> (3) Employee safety.
>
> (b) Revision of Regulations.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection "(c)" of this section.
>
> * * * * *
>
> (d) Identification of Internal Rail Defects.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—
>
> (1) Inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and
>
> (2) Any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

The reasons for the actual provisions of the action considered by the agency are explained in the body of the analysis.

2. The objectives and legal basis for the rule:

The objective of the rule is to enhance the safety of rail transportation, protecting both those traveling and working on the system, and those off the system who might be adversely affected by a rail incident. The legal basis is reflected in the response to "1." above and in the preamble.

3. A description of and an estimate of the number of small entities to which the rule would apply:

The rule would apply to railroads. Small entities among affected railroads would all be short line railroads. There are approximately 700 short line railroads in the United Sates, but many of them are not small entities, either because they are large enterprises as railroads, or because they are operations of large entities in other industries.

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

See the Paperwork Reduction Act analysis.

5. Federal rules which may duplicate, overlap, or conflict with the rule:

None.

Significant Alternatives

In their comments to the NPRM, labor organizations suggested certain enhancements. However, the FRA does not believe that their suggestions would have made the rule more flexible; rather, they would have increased the burden on small entities significantly with relatively little commensurate benefit.

1. Differing compliance or reporting requirements or timetables which take into account the resources available to small entities:

In the two sections most likely to affect small entities, § 213.4 Excepted Track and § 213.109 Crossties, the final rule includes a two year phase-in period.

2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities:

Although their needs were considered at every step of the process, there was no way to reduce the burden on small entities that did not apply as well to larger entities.

3. Use of performance, rather than design standards:

Where possible, especially in the geometry standards, the standards were tied to performance. Although they were expressed as specifications, the underlying performance model ensures that they will have the same effect as a performance standard would. In the high speed standards, vehicle qualification is expressed strictly as a performance standard.

4. Exemption from coverage of the rule, or any part thereof, for such small entities:

There was no practicable way to exclude small entities. Further, the low volume operations of the largest railroads often serve shippers which are small entities, and any additional burden on the low volume lines of large railroads would likely have adverse impacts on those small shippers.

Definition of Small Entity

SBREFA incorporates the definition for "small entity" that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR Part 121) for those businesses to be covered by agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. Also, "small governmental jurisdictions" that serve populations of 50,000 or less are small entities. (Commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation for small governmental jurisdictions, or small entities.) An agency may establish one or more other definitions for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities.

Pursuant to its statutory authority, the Small Business Administration (SBA) promulgated regulations that clarify the term "small entity" by industry, using number of employees or annual income as criteria. *See* 13 CFR 121.101–108 and 201. In the SBA regulations, main line railroads with 1,500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. The SBA regulations do not address hazardous material shippers in the railroad industry.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC) developed a classification system for freight railroads as Class I, II, or III, based on annual operating revenue. (The detailed, qualifying criteria for these classifications are set forth in 49 CFR part 1201.) The Department of Transportation's Surface Transportation Board, which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify entities by size. The SBA recognized this classification system as a sound one, and concurs with FRA's decision to continue using it, provided the public has notice of the classification system in use for any particular proceeding and an opportunity to comment on it.

As explained in detail in the "Interim Policy Statement Concerning Small

Entities Subject to the Railroad Safety Laws," published August 11, 1997 at 62 Fed. Reg. 43024, FRA has decided to define "small entity," on an interim basis, to include only those entities whose revenues would bring them within the Class III definition. This definition is the basis of the small business analysis for this proceeding.

Effect of This Rule on Small Businesses

All of the small entities directly affected by this rule are short line railroads. They are represented by the ASLRA who participated in the Track Working Group. The ASLRA was not, of course, involved in developing those standards which would not apply to any of their members, for example, the high speed track standards. The ASLRA supported the NPRM as drafted by the Track Working Group and recommended by the RSAC. All of the individual short line railroads that participated directly in the Track Working Group agreed to the proposal as well. In addition, the ASLRA and several short line railroads participated in all of the workshops hosted by FRA in 1993 following the publication of the ANPRM in this proceeding.

Almost every change in this final rule will enhance safety. Some provisions serve to reduce burdens, but in most cases, the burden is increased, particularly for the railroads. However, the Track Working Group considered the impact on small entities at every step, and introduced phase-in periods to mitigate the effect on small entities by the crosstie standard and the new gage standard for excepted track. While there is no clear way to measure the net effect of the final rule, it is likely the net benefit will be positive. The RSAC process was intended to take rulemaking into areas where data is sparse, and the end product, as might be expected, is difficult to quantify.

FRA did not quantify the estimated annual cost to the average firm, nor compare it to average annual revenue or profits, because the relative impact of the final rule varies more by condition of the track owned by a railroad than by the size of the railroad. Railroads with better, safer track will face proportionally much smaller effects from the final rule. The average annual total cost is likely to be less than $2 million per year for the entire railroad industry, with more than half of the cost borne by large railroads. The average burden per small railroad is likely therefore to be less than $1,500 per year. The burden will be greater on railroads with more track, and lower on railroads with less.

No provision included in this final rule will have a very adverse impact on the affected firms. A proposal which would have a large beneficial impact is the GRMS as an alternative to the crosstie standard. (*See* previous discussion in the preamble to this notice.) Some provisions which at first impression seem to have a significant impact, such as an increase in the number of required crossties, in fact will have little impact.

For example, this final rule includes an increase in the number of crossties required on curved track. In a worst case, about 30 percent of the Class 1 track of a very small entity might not comply with the requirement for six ties per 39-foot section of rail. Of this, 80 percent would not comply with geometry standards or standards affecting effective distribution of ties, which likely would be fixed by adding enough ties comply or exceed the standard. The remaining track, about six percent of all track, would not have sufficient ties to meet the revised standard. Some of this track would not meet the current standard. One tie per section for six percent of the track would be slightly more than eight ties per mile. At a cost of $40 per tie installed, this would mean a cost of about $320 per mile, for a worst case. A railroad with track this poor would have presented a serious safety hazard in the first place, and would not be representative. Most small railroads currently exceed the revised standard. A more detailed description of the impact is contained in the complete IRFA, found in the docket for this proceeding.

Throughout the discussions of the Track Working Group, and in the NPRM for this proceeding, FRA asked for additional information on benefits and costs. On occasion, participants shared such data with FRA. For example, the ASLRA which conducted a survey of its members to analyze the potential impact of increasing the number of crossties required in a 39-foot segment of track. At other times, data were not shared with FRA, and the agency was unable to determine whether the information was withheld for proprietary reasons or whether it simply was not available. However, by voting in the Track Working Group and in the RSAC to accept a provision in the proposed rule, often as part of a compromise with other interested parties, the parties' acceptance of a package of compromises revealed that they preferred the compromise position to a position of no compromise (the existing rule with the possibility of some other rulemaking activity). This implies that the burdens which rail management representatives accepted likely were not significant. Details of provisions that will have little or no impact may be found in the complete IRFA, found in the docket for this proceeding.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The FRA has analyzed the existing burden, and the burden under the final rule analyzed here. According to this analysis, the total annual burden increases from about $42,000,000 to about $53,000,000. However, the overwhelming majority of this apparent increase is due to a change in FRA's assumption regarding wages. In an earlier analysis under the Paperwork Reduction Act, the FRA had assumed a wage of $22 per hour for recording track inspections, but in the analysis of this final rule, the FRA used an assumed wage of $30 per hour. In addition, the number of railroads calculated by FRA to be covered by the regulations increased from 500 to 680. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.4—Excepted Track:					
—Designation of track as excepted	160 railroads	32 designations	15 minutes	8 hours	$240
—Notification to FRA about removal of excepted track.	160 railroads	40 notifications	10 minutes	7 hours	210
213.5—Responsibility of track owners	620 railroads	16 notifications	8 hours	120 hours	3,600
213.7—Designation of qualified persons to supervise certain renewals and inspect track:					

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Designations (fully qualified)	620 railroads	1,500 names	10 minutes	250 hours	7,500
—Designations (partially qualified)	31 railroads	300 names	10 minutes	50 hours	1,500
—Notification and dispatched to location.	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.17—Waivers	620 railroads	4 petitions	24 hours	96 hours	2,880
213.57—Curves, elevation and speed limitations:					
—Request to FRA for approval	620 railroads	3 requests	40 hours	120 hours	3,600
—Notification to FRA with written consent of other affected track owners.	620 railroads	2 notifications	45 minutes	1.5 hours	45
—Test plan	1 railroad	6 plans	16 hours	96 hours	2,880
213.119—Continuous welded rail (CWR), general:					
—Written procedures	110 railroads	110 procedures	40 hrs. Class I RRs	2,000 hours	60,000
—Training program	110 railroads	110 programs	16 hrs. Class II RRs	1,200 hours	36,000
—Recordkeeping	110 railroads	4,500 records	40 hrs Class I RRs 8 hrs Class II RRs 10 minutes	750 hours	22,500
213.122—Torch cut rail	20 railroads	2,000 records	5 minutes	167 hours	5,010
213.233—Track inspections	620 railroads	2,500 inspections	1 minute	41.5 hours	1,079
213.237—Inspection of rail	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.241—Inspection records	620 railroads	Varies	Varies	1,763,991 hours	52,919,730
213.303—Responsibility for Compliance	2 railroads	1 petition	8 hours	8 hours	240
213.305—Designation of qualified individuals; general qualifications:					
—Designations (fully qualified)	2 railroads	150 qualifications	10 minutes	25 hours	750
—Designations (partially qualified)	2 railroads	15 qualifications	10 minutes	2.5 hours	75
213.317—Waivers	2 railroads	1 petition	24 hours	24 hours	720
213.329—Curves, elevation and speed limitations:					
—FRA approval of qualified equipment and higher curving speeds.	2 railroads	1 notification	40 hours	40 hours	1,200
—Written notification to FRA with written consent of other affected track owners.	2 railroads	1 notification	45 minutes	45 minutes	22.50
213.333—Automated Vehicle Inspection System					
—Track Geometry Measurement System.	3 railroads	18 reports	20 hours	360 hours	9,360
—Track/Vehicle Performance Measurement System.					
—Written procedures	1 railroad	1 program	8 hours	8 hours	240
—Copies of most recent exception printouts.	2 railroads	13 printouts	20 hours	260 hours	7,800
213.339—Inspection of rail in service	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.341—Initial inspection of new rail and welds					
—Mill inspection	2 railroads	1 report	8 hours	8 hours	240
—Welding plant inspection	2 railroads	2 reports	8 hours	16 hours	480
—Inspection of field welds	2 railroads	200 records	20 minutes	67 hours	2,010
—Marking of defective rail	N/A	N/A	Usual and customary procedure.	N/A	N/A
213.343—Continuous welded rail (CWR):					
—Written procedures	2 railroads	2 procedures	40 hours	80 hours	2,400
—Training program	2 railroads	2 programs	40 hours	80 hours	2,400
—Recordkeeping	2 railroads	200 records	10 minutes	33 hours	990
213.345—Vehicle qualification testing	1 railroad	1 report	16 hours	16 hours	480
213.347—Automotive or railroad crossings at grade					
—Protection plans	1 railroad	2 plans	8 hours	16 hours	480
213.353—Turnouts and crossovers, generally.	1 railroad	1 guidebook	40 hours	40 hours	1,200
213.361—Right of Way	1 railroad	1 plan	40 hours	40 hours	1,200
213.369—Inspection records:					
—Record of inspection	2 railroads	500 records	1 minute	8 hours	208
—Designation of location where record should be maintained.	2 railroads	2 designations	15 minutes	30 minutes	15

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4 hours	104

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Mark Weihofen at 202–632–3303.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The information collection requirements contained in this rule have been approved under OMB control number 2130–0010.

Environmental Impact

FRA has evaluated these track safety regulations in accordance with 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. These regulations and this statement of policy meet the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA revises part 213, title 49, Code of Federal Regulations as follows:

PART 213—TRACK SAFETY STANDARDS

Subpart A—General

Sec.

Subpart B—Roadbed

Subpart C—Track Geometry

Subpart D—Track Structure

Subpart E—Track Appliances and Track-Related Devices

Subpart F—Inspection

Subpart G—Train Operations at Track Classes 6 and Higher

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461; and 49 CFR 1.49(m).

Subpart A—General

§ 213.1 Scope of part.

(a) This part prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. The requirements prescribed in this part apply to specific track conditions existing in isolation. Therefore, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide for safe operations over that track. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(b) Subparts A through F apply to track Classes 1 through 5. Subpart G and 213.2, 213.3, and 213.15 apply to track over which trains are operated at speeds in excess of those permitted over Class 5 track.

§ 213.2 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the

same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and that does not impose an unreasonable burden on interstate commerce.

§ 213.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all standard gage track in the general railroad system of transportation.

(b) This part does not apply to track—

(1) Located inside an installation which is not part of the general railroad system of transportation; or

(2) Used exclusively for rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

§ 213.4 Excepted track.

A track owner may designate a segment of track as excepted track provided that—

(a) The segment is identified in the timetable, special instructions, general order, or other appropriate records which are available for inspection during regular business hours;

(b) The identified segment is not located within 30 feet of an adjacent track which can be subjected to simultaneous use at speeds in excess of 10 miles per hour;

(c) The identified segment is inspected in accordance with 213.233(c) and 213.235 at the frequency specified for Class 1 track;

(d) The identified segment of track is not located on a bridge including the track approaching the bridge for 100 feet on either side, or located on a public street or highway, if railroad cars containing commodities required to be placarded by the Hazardous Materials Regulations (49 CFR part 172), are moved over the track; and

(e) The railroad conducts operations on the identified segment under the following conditions:

(1) No train shall be operated at speeds in excess of 10 miles per hour;

(2) No occupied passenger train shall be operated;

(3) No freight train shall be operated that contains more than five cars required to be placarded by the Hazardous Materials Regulations (49 CFR part 172); and

(4) The gage on excepted track shall not be more than 4 feet 10¼ inches. This paragraph (e)(4) is applicable September 21, 1999.

(f) A track owner shall advise the appropriate FRA Regional Office at least 10 days prior to removal of a segment of track from excepted status.

§ 213.5 Responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall—

(1) Bring the track into compliance;

(2) Halt operations over that track; or

(3) Operate under authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, subject to conditions set forth in this part.

(b) If an owner of track to which this part applies designates a segment of track as "excepted track" under the provisions of § 213.4, operations may continue over that track without complying with the provisions of subparts B, C, D, and E of this part, unless otherwise expressly stated.

(c) If an owner of track to which this part applies assigns responsibility for the track to another person (by lease or otherwise), written notification of the assignment shall be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but shall be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this part; and

(6) A statement signed by the assignee acknowledging the assignment to him of responsibility for purposes of compliance with this part.

(d) The Administrator may hold the track owner or the assignee or both responsible for compliance with this part and subject to penalties under § 213.15.

(e) A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect.

(f) When any person, including a contractor for a railroad or track owner, performs any function required by this part, that person is required to perform that function in accordance with this part.

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track under traffic conditions. Each person designated shall have—

(1) At least—

(i) 1 year of supervisory experience in railroad track maintenance; or

(ii) A combination of supervisory experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance;

(2) Demonstrated to the owner that he or she—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this part.

(b) Each track owner to which this part applies shall designate qualified persons to inspect track for defects. Each person designated shall have—

(1) At least—

(i) 1 year of experience in railroad track inspection; or

(ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection;

(2) Demonstrated to the owner that he or she—

(i) Knows and understands the requirements of this part;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

(c) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a) and (b) of this section, but with at least one

year of maintenance-of-way or signal experience, may pass trains over broken rails and pull aparts provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alinement, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is adequate for initial training;

(2) The person deems it safe and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.7 of this part are notified and dispatched to the location promptly for the purpose of authorizing movements and effecting temporary or permanent repairs.

(d) With respect to designations under paragraphs (a), (b), and (c) of this section, each track owner shall maintain written records of—

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241. These records shall be kept available for inspection or copying by the Federal Railroad Administration during regular business hours.

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§ 213.57(b), 213.59(a), 213.113(a), and 213.137(b) and (c), the following maximum allowable operating speeds apply—

[In miles per hour]

Over track that meets all of the requirements prescribed in this part for—	The maximum allowable operating speed for freight trains is—	The maximum allowable operating speed for passenger trains is—
Excepted track	10	N/A
Class 1 track	10	15
Class 2 track	25	30
Class 3 track	40	60
Class 4 track	60	80
Class 5 track	80	90

(b) If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements for Class 1 track, operations may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

§ 213.11 Restoration or renewal of track under traffic conditions.

If during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work on the track shall be under the continuous supervision of a person designated under § 213.7(a) who has at least one year of supervisory experience in railroad track maintenance, and subject to any limiting conditions specified by such person. The term "continuous supervision" as used in this section means the physical presence of that person at a job site. However, since the work may be performed over a large area, it is not necessary that each phase of the work be done under the visual supervision of that person.

§ 213.13 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this part, the amount of rail movement, if any, that occurs while the track is loaded must be added to the measurements of the unloaded track.

§ 213.15 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. "Person" means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and anyone held by the Federal Railroad Administrator to be responsible under § 213.5(d) or § 213.303(c). Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 213.17 Waivers.

(a) Any owner of track to which this part applies, or other person subject to this part, may petition the Federal Railroad Administrator for a waiver from any or all requirements prescribed in this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver is in the public interest and is consistent with railroad safety, the Administrator may grant the exemption subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

213.19 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are assigned OMB control number 2130–0010.

(b) The information collection requirements are found in the following sections: §§ 213.4, 213.5, 213.7, 213.17, 213.57, 213.119, 213.122, 213.233, 213.237, 213.241, 213.303, 213.305, 213.317, 213.329, 213.333, 213.339, 213.341, 213.343, 213.345, 213.353, 213.361, 213.369.

Subpart B—Roadbed

§ 213.31 Scope.

This subpart prescribes minimum requirements for roadbed and areas immediately adjacent to roadbed.

§ 213.33 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals:

(1) Along the right-of-way, and

(2) At highway-rail crossings; (This paragraph (b)(2) is applicable September 21, 1999.)

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Subpart C—Track Geometry

§ 213.51 Scope.

This subpart prescribes requirements for the gage, alinement, and surface of track, and the elevation of outer rails and speed limitations for curved track.

§ 213.53 Gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table—

Class of track	The gage must be at least—	But not more than—
Excepted track	N/A	4′10¼″.
Class 1 track	4′8″	4′10″.
Class 2 and 3 track	4′8″	4′9¾″.
Class 4 and 5 track	4′8″	4′9½″.

§ 213.55 Alinement.

Alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62-foot line[1] may not be more than— (inches)	The deviation of the mid-ordinate from a 31-foot chord[2] may not be more than— (inches)	The deviation of the mid-ordinate from a 62-foot chord[2] may not be more than— (inches)
Class 1 track	5	[3] N/A	5
Class 2 track	3	[3] N/A	3
Class 3 track	1¾	1¼	1¾
Class 4 track	1½	1	1½
Class 5 track	¾	½	⅝

[1] The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail shall be used for the full length of that tangential segment of track.

[2] The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

[3] N/A—Not Applicable.

§ 213.57 Curves; elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2 and 7 inches on Classes 3 through 5. Except as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail. (The first sentence of paragraph (a) is applicable September 21, 1999.)

(b)(1) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

(2) Table 1 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(c)(1) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula—

[1] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve .

[2] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

$$V_{max} = \sqrt{\frac{E_a + 4}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches).[1]

D = Degree of curvature (degrees).[2]

(2) Table 2 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by the Federal Railroad Administration and the railroad demonstrates that:

(1) When positioned on a track with a uniform 4-inch superelevation, the roll angle between the floor of the equipment and the horizontal does not exceed 5.7 degrees; and

(2) When positioned on a track with a uniform 6 inch superelevation, no wheel of the equipment unloads to a value of 60 percent of its static value on perfectly level track, and the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees.

(3) The track owner shall notify the Federal Railroad Administrator no less than 30 calendar days prior to the proposed implementation of the higher curving speeds allowed under the formula in paragraph (c) of this section. The notification shall be in writing and shall contain, at a minimum, the following information—

(i) A complete description of the class of equipment involved, including schematic diagrams of the suspension systems and the location of the center of gravity above top of rail;

(ii) A complete description of the test procedure [3] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(iii) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment; and

(iv) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(e) A track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.

(f) Equipment presently operating at curving speeds allowed under the formula in paragraph (c) of this section, by reason of conditional waivers granted by the Federal Railroad Administration, shall be considered to have successfully complied with the requirements of paragraph (d) of this section.

(g) A track owner or a railroad operating above Class 5 speeds, may request approval from the Federal Railroad Administrator to operate specified equipment at a level of cant deficiency greater than four inches in accordance with § 213.329(c) and (d) on curves in Class 1 through 5 track which are contiguous to the high speed track provided that—

(1) The track owner or railroad submits a test plan to the Federal Railroad Administrator for approval no less than thirty calendar days prior to any proposed implementation of the higher curving speeds. The test plan shall include an analysis and determination of carbody acceleration safety limits for each vehicle type which indicate wheel unloading of 60 percent in a steady state condition and 80 percent in a transient (point by point) condition. Accelerometers shall be laterally-oriented and floor-mounted near the end of a representative vehicle of each type;

(2) Upon FRA approval of a test plan, the track owner or railroad conducts incrementally increasing train speed test runs over the curves in the identified track segment(s) to demonstrate that wheel unloading is within the limits prescribed in paragraph (g)(1) of this section;

(3) Upon FRA approval of a cant deficiency level, the track owner or railroad inspects the curves in the identified track segment with a Track Geometry Measurement System (TGMS) qualified in accordance with § 213.333 (b) through (g) at an inspection frequency of at least twice annually with not less than 120 days interval between inspections; and

(4) The track owner or railroad operates an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service or a portable device that monitors on-board instrumentation on trains over the curves in the identified track segment at the revenue speed profile at a frequency of at least once every 90 days with not less than 30 days interval between inspections. The instrumented car or the portable device shall monitor a laterally-oriented accelerometer placed near the end of the vehicle at the floor level. If the carbody lateral acceleration measurement exceeds the safety limits prescribed in paragraph (g)(1), the railroad shall operate trains at curving speeds in accordance with paragraph (b) or (c) of this section; and

(5) The track owner or railroad shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (g)(3) and (4) of this section.

§ 213.59 Elevation of curved track; runoff.

(a) If a curve is elevated, the full elevation shall be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable operating speed for that curve under § 213.57(b).

(b) Elevation runoff shall be at a uniform rate, within the limits of track surface deviation prescribed in § 213.63, and it shall extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

§ 213.63 Track surface.

Each owner of the track to which this part applies shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The runoff in any 31 feet of rail at the end of a raise may not be more than.	3½	3	2	1½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	3	2¾	2¼	2	1¼

[3] The test procedure may be conducted in a test facility whereby all the wheels on one side (right or left) of the equipment are alternately raised and lowered by 4 and 6 inches and the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the equipment has been rotated.

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than* [1, 2]	3	2¼	2	1¾	1½
*Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	2	1¾	1¼	1	¾

[1] Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches. (Footnote 1 is applicable December 21, 1999.)

[2] However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote. (Footnote 2 is applicable September 21, 1999.)

Subpart D—Track Structure

§ 213.101 Scope.

This subpart prescribes minimum requirements for ballast, crossties, track assembly fittings, and the physical conditions of rails.

§ 213.103 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will —

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alinement.

§ 213.109 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.53(b);

(ii) Maintain surface within the limits prescribed in § 213.63; and

(iii) Maintain alinement within the limits prescribed in § 213.55.

(2) The minimum number and type of crossties specified in paragraphs (c) and (d) of this section effectively distributed to support the entire segment; and

(3) At least one crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (f) of this section.

(c) Each 39 foot segment of: Class 1 track shall have five crossties; Classes 2 and 3 track shall have eight crossties; and Classes 4 and 5 track shall have 12 crossties, which are not:

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally more than ½ inch relative to the crossties; or

(4) Cut by the tie plate through more than 40 percent of a ties' thickness.

(d) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table (this paragraph (d) is applicable September 21, 2000)

Class of track	Tangent track and curves ≤2 degrees	Turnouts and curved track over 2 degrees
Class 1 track	5	6
Class 2 track	8	9
Class 3 track	8	10
Class 4 and 5 track	12	14

(e) Crossties counted to satisfy the requirements set forth in the table in paragraph (d) of this section shall not be—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally ½ inch relative to the crossties; or

(4) Cut by the tie plate through more than 40 percent of a crosstie's thickness this paragraph (e) is applicable September 21, 2000.

(f) Class 1 and Class 2 track shall have one crosstie whose centerline is within 24 inches of each rail joint location, and Classes 3 through 5 track shall have one crosstie whose centerline is within 18 inches of each rail joint location or, two crossties whose centerlines are within 24 inches either side of each rail joint location. The relative position of these ties is described in the following diagrams:

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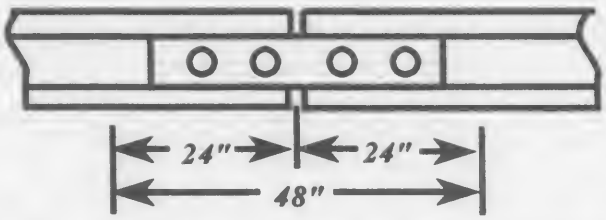
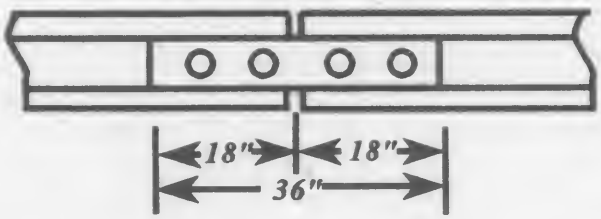
Classes 1 and 2

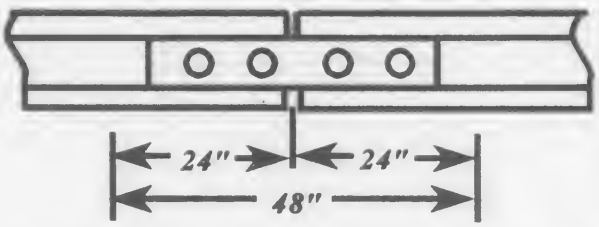


Each rail joins in Classes 1 and 2 track shall be supported by at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 48" shown above.

Classes 3 through 5



Each rail joins in Classes 3 through 5 track shall be supported by either at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 36" shown above, or:



Two crossties, one on each side of the rail joint, whose centerlines are within 24" of the rail joint location shown above.

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(g) For track constructed without crossties, such as slab track, track connected directly to bridge structural components and track over servicing pits, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

§ 213.113 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated.

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture			25	5	C.
Engine burn fracture			80	25	D.

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Defective weld			100	80	[A2] or [E and H].
				100	[A] or [E and H].
Horizontal split head	1	2			H and F.
Vertical split head	2	4			I and G.
Split web	4				B.
Piped rail	(1)	(1)	(1)		A.
Head web separation					
	½	1			H and F.
Bolt hole crack	1	1½			H and G.
	1½				B.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				[A] or [E and I].
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth ≥ ⅜ and Length ≥ 8.				H.

[1] Break out in rail head.

Notes

A. Assign person designated under § 213.7 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.7 to make visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under § 213.237, and defects are discovered in Classes 3 through 5 which require remedial action C, the operating speed shall be limited to 50 m.p.h., or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

E. Apply joint bars to defect and bolt in accordance with § 213.121(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over defective rail to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken base* means any break in the base of the rail.

(8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary break* means a partial or complete break in which there is no sign

of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.

(14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ 213.115 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following—	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 1 track	1/4	1/4
Class 2 track	1/4	3/16
Class 3 track	3/16	3/16
Class 4 and 5 track	1/8	1/8

§ 213.119 Continuous welded rail (CWR); general.

Each track owner with track constructed of CWR shall have in effect and comply with written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration by December 21, 1998. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.7 of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55 of this part. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/kinky rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.121 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) In the case of conventional jointed track, each rail shall be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.

(e) In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.

(f) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this paragraph do not apply. Those locations when over 400 feet in length, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this part.

(g) No rail shall have a bolt hole which is torch cut or burned in Classes 2 through 5 track. For Class 2 track, this paragraph (g) is applicable September 21, 1999.

(h) No joint bar shall be reconfigured by torch cutting in Classes 3 through 5 track.

§ 213.122 Torch cut rail.

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used in Classes 3 through 5 track. When a rail end is torch cut in emergency situations, train speed over that rail end shall not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends in Classes 3 through 5 track the following shall apply—

(1) Within one year of September 21, 1998, all torch cut rail ends in Class 5 track shall be removed;

(2) Within two years of September 21, 1998, all torch cut rail ends in Class 4 track shall be removed; and

(3) Within one year of September 21, 1998, all torch cut rail ends in Class 3 track over which regularly scheduled passenger trains operate, shall be inventoried by the track owner.

(b) Following the expiration of the time limits specified in paragraphs (a)(1), (2), and (3) of this section, any torch cut rail end not removed from Classes 4 and 5 track, or any torch cut rail end not inventoried in Class 3 track over which regularly scheduled passenger trains operate, shall be removed within 30 days of discovery. Train speed over that rail end shall not exceed the maximum allowable for Class 2 track until removed.

§ 213.123 Tie plates.

(a) In Classes 3 through 5 track where timber crossties are in use there shall be tie plates under the running rails on at least eight of any 10 consecutive ties.

(b) In Classes 3 through 5 track no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate. This paragraph (b) is applicable September 21, 1999.)

§ 213.127 Rail fastening systems.

Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in § 213.53(b). Each component of each such system shall be evaluated to determine whether gage is effectively being maintained.

§ 213.133 Turnouts and track crossings generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) Classes 3 through 5 track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. For Class 3 track, this paragraph (b) is applicable September 21, 1999.)

(c) Each flangeway at turnouts and track crossings shall be at least 1½ inches wide.

§ 213.135 Switches.

(a) Each stock rail must be securely seated in switch plates, but care shall be used to avoid canting the rail by overtightening the rail braces.

(b) Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail. Broken or cracked switch point rails will be subject to the requirements of § 213.113, except that where remedial actions C, D, or E require the use of joint bars, and joint bars cannot be placed due to the physical configuration of the switch, remedial action B will govern, taking into account any added safety provided by the presence of reinforcing bars on the switch points.

(c) Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

(d) The heel of each switch rail shall be secure and the bolts in each heel shall be kept tight.

(e) Each switch stand and connecting rod shall be securely fastened and operable without excessive lost motion.

(f) Each throw lever shall be maintained so that it cannot be operated with the lock or keeper in place.

(g) Each switch position indicator shall be clearly visible at all times.

(h) Unusually chipped or worn switch points shall be repaired or replaced. Metal flow shall be removed to insure proper closure.

(i) Tongue & Plain Mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.

§ 213.137 Frogs.

(a) The flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1⅜ inches, or less than 1½ inches on Classes 2 through 5 track.

(b) If a frog point is chipped, broken, or worn more than five-eighths inch down and 6 inches back, operating speed over the frog shall not be more than 10 m.p.h..

(c) If the tread portion of a frog casting is worn down more than three-eighths inch below the original contour, operating speed over that frog shall not be more than 10 m.p.h..

(d) Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.

§ 213.139 Spring rail frogs.

(a) The outer edge of a wheel tread shall not contact the gage side of a spring wing rail.

(b) The toe of each wing rail shall be solidly tamped and fully and tightly bolted.

(c) Each frog with a bolt hole defect or head-web separation shall be replaced.

(d) Each spring shall have compression sufficient to hold the wing rail against the point rail.

(e) The clearance between the holddown housing and the horn shall not be more than one-fourth of an inch.

§ 213.141 Self-guarded frogs.

(a) The raised guard on a self-guarded frog shall not be worn more than three-eighths of an inch.

(b) If repairs are made to a self-guarded frog without removing it from service, the guarding face shall be restored before rebuilding the point.

§ 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line [2], may not be less than—	Guard face gage The distance between guard lines [1], measured across the track at right angles to the gage line [2], may not be more than—
Class 1 track	4′ 6⅛″	4′ 5¼″
Class 2 track	4′ 6¼″	4′ 5⅛″
Class 3 and 4 track	4′ 6⅜″	4′ 5⅛″
Class 5 track	4′ 6½″	4′ 5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line ⅝ inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

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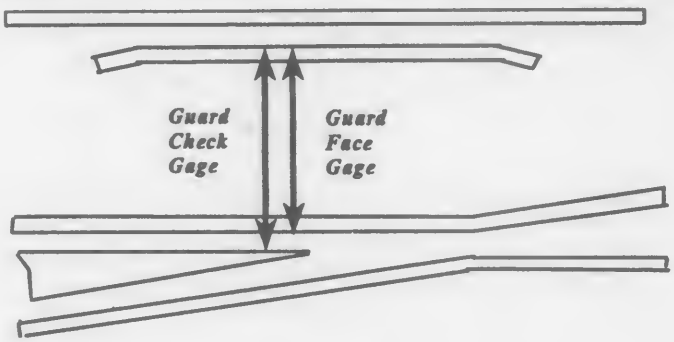

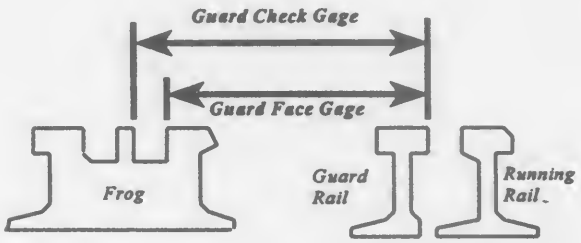

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Subpart E—Track Appliances and Track-Related Devices

§ 213.201 Scope.

This subpart prescribes minimum requirements for certain track appliances and track-related devices.

§ 213.205 Derails.

(a) Each derail shall be clearly visible.

(b) When in a locked position, a derail shall be free of lost motion which would prevent it from performing its intended function.

(c) Each derail shall be maintained to function as intended.

(d) Each derail shall be properly installed for the rail to which it is applied. (This paragraph (d) is applicable September 21, 1999.)

Subpart F—Inspection

§ 213.231 Scope.

This subpart prescribes requirements for the frequency and manner of inspecting track to detect deviations from the standards prescribed in this part.

§ 213.233 Track inspections.

(a) All track shall be inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.7.

(b) Each inspection shall be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection shall be made in accordance with the following schedule—

Class of track	Type of track	Required frequency
Excepted track and Class 1, 2, and 3 track.	Main track and sidings	Weekly with at least 3 calendar days interval between inspections, or before use, if the track is used less than once a week, or twice weekly with at least 1 calendar day interval between inspections, if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.
Excepted track and Class 1, 2, and 3 track.	Other than main track and sidings	Monthly with at least 20 calendar days interval between inspections.

Class of track	Type of track	Required frequency
Class 4 and 5 track		Twice weekly with at least 1 calendar day interval between inspections.

(d) If the person making the inspection finds a deviation from the requirements of this part, the inspector shall immediately initiate remedial action.

Note to § 213.233: Except as provided in paragraph (b) of this section, no part of this section will in any way be construed to limit the inspector's discretion as it involves inspection speed and sight distance.

§ 213.235 Inspection of switches, track crossings, and lift rail assemblies or other transition devices on moveable bridges.

(a) Except as provided in paragraph (c) of this section, each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device shall be inspected on foot at least monthly.

(b) Each switch in Classes 3 through 5 track that is held in position only by the operating mechanism and one connecting rod shall be operated to all of its positions during one inspection in every 3 month period.

(c) In the case of track that is used less than once a month, each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device shall be inspected on foot before it is used.

§ 213.237 Inspection of rail.

(a) In addition to the track inspections required by § 213.233, a continuous search for internal defects shall be made of all rail in Classes 4 through 5 track, and Class 3 track over which passenger trains operate, at least once every 40 million gross tons (mgt) or once a year, whichever interval is shorter. On Class 3 track over which passenger trains do not operate such a search shall be made at least once every 30 mgt or once a year, whichever interval is longer. (This paragraph (a) is applicable January 1, 1999.

(b) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail shall be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under paragraph (a) of this section. (This paragraph (d) is not retroactive to tests performed prior to September 21, 1998.

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time or tonnage limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.239 Special inspections.

In the event of fire, flood, severe storm, or other occurrence which might have damaged track structure, a special inspection shall be made of the track involved as soon as possible after the occurrence and, if possible, before the operation of any train over that track.

§ 213.241 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Each record of an inspection under §§ 213.4, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of records which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.237(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data;

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part shall be made available for inspection and copying by the Federal Railroad Administration at the locations specified in paragraph (b) of this section; and

(7) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections.

Subpart G—Train Operations at Track Classes 6 and Higher

§ 213.301 Scope of subpart.

This subpart applies to all track used for the operation of trains at a speed greater than 90 m.p.h. for passenger equipment and greater than 80 m.p.h. for freight equipment.

§ 213.303 Responsibility for compliance.

(a) Any owner of track to which this subpart applies who knows or has notice that the track does not comply with the requirements of this subpart, shall—

(1) Bring the track into compliance; or

(2) Halt operations over that track.

(b) If an owner of track to which this subpart applies assigns responsibility for the track to another person (by lease or otherwise), notification of the assignment shall be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but shall be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track;

(5) A statement as to the competence and ability of the assignee to carry out the duties of the track owner under this subpart;

(6) A statement signed by the assignee acknowledging the assignment to that person of responsibility for purposes of compliance with this subpart.

(c) The Administrator may hold the track owner or the assignee or both responsible for compliance with this subpart and subject to the penalties under § 213.15.

(d) When any person, including a contractor for a railroad or track owner, performs any function required by this part, that person is required to perform that function in accordance with this part.

§ 213.305 Designation of qualified individuals; general qualifications.

Each track owner to which this subpart applies shall designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements prescribed in this subpart. Each individual, including a contractor or an employee of a contractor who is not a railroad employee, designated to:

(a) Supervise restorations and renewals of track shall meet the following minimum requirements:

(1) At least;

(i) Five years of responsible supervisory experience in railroad track maintenance in track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the supervision, restoration, and renewal of high speed track; or

(ii) A combination of at least one year of responsible supervisory experience in track maintenance in Class 4 or higher and the successful completion of a minimum of 80 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track; or

(iii) A combination of at least two years of experience in track maintenance in track Class 4 or higher and the successful completion of a minimum of 120 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track.

(2) Demonstrate to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Be authorized in writing by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(b) Inspect track for defects shall meet the following minimum qualifications:

(1) At least:

(i) Five years of responsible experience inspecting track in Class 4 or above and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on the job training emphasizing the techniques to be employed in the inspection of high speed track; or

(ii) A combination of at least one year of responsible experience in track inspection in Class 4 or above and the successful completion of a minimum of 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(iii) A combination of at least two years of experience in track maintenance in Class 4 or above and the successful completion of a minimum of 120 hours of specialized training in the inspection of high speed track provided by the employer or from a college level engineering program, supplemented by special on the job training provided by the employer with emphasis on the inspection of high speed track.

(2) Demonstrate to the track owner that the individual:

(i) Knows and understands the requirements of this subpart;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(3) Be authorized in writing by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(c) Individuals designated under paragraphs (a) or (b) of this section that inspect continuous welded rail (CWR) track or supervise the installation, adjustment, and maintenance of CWR in accordance with the written procedures established by the track owner shall have:

(1) Current qualifications under either paragraph (a) or (b) of this section;

(2) Successfully completed a training course of at least eight hours duration specifically developed for the application of written CWR procedures issued by the track owner; and

(3) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(4) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successful completion of a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or it may be a computer file with the results of an interactive training course.

(d) Persons not fully qualified to supervise certain renewals and inspect track as outlined in paragraphs (a), (b) and (c) of this section, but with at least one year of maintenance of way or

signal experience, may pass trains over broken rails and pull aparts provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alinement, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is adequate for initial training;

(2) The person deems it safe, and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.305 of this subpart are notified and dispatched to the location as soon as practicable for the purpose of authorizing movements and effectuating temporary or permanent repairs.

(e) With respect to designations under paragraphs (a), (b), (c) and (d) of this section, each track owner shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the track owner has determined a successful completion of that training course, including test scores or other qualifying results;

(3) Track inspections made by each individual as required by § 213.369. These records shall be made available for inspection and copying by the Federal Railroad Administration during regular business hours.

§ 213.307 Class of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§ 213.329, 213.337(a) and 213.345(c), the following maximum allowable operating speeds apply:

Over track that meets all of the requirements prescribed in this subpart for—	The maximum allowable operating speed for trains[1] is—
Class 6 track	110 m.p.h.
Class 7 track	125 m.p.h.
Class 8 track	160 m.p.h.[2]
Class 9 track	200 m.p.h.

[1] Freight may be transported at passenger train speeds if the following conditions are met:

(1) The vehicles utilized to carry such freight are of equal dynamic performance and have been qualified in accordance with Sections 213.345 and 213.329(d) of this subpart.

(2) The load distribution and securement in the freight vehicle will not adversely affect the dynamic performance of the vehicle. The axle loading pattern is uniform and does not exceed the passenger locomotive axle loadings utilized in passenger service operating at the same maximum speed.

(3) No carrier may accept or transport a hazardous material, as defined at 49 CFR 171.8, except as provided in Column 9A of the Hazardous Materials Table (49 CFR 172.101) for movement in the same train as a passenger-carrying vehicle or in Column 9B of the Table for movement in a train with no passenger-carrying vehicles.

[2] Operating speeds in excess of 150 m.p.h. are authorized by this part only in conjunction with a rule of particular applicability addressing other safety issues presented by the system.

(b) If a segment of track does not meet all of the requirements for its intended class, it is to be reclassified to the next lower class of track for which it does meet all of the requirements of this subpart. If a segment does not meet all of the requirements for Class 6, the requirements for Classes 1 through 5 apply.

§ 213.309 Restoration or renewal of track under traffic conditions.

(a) Restoration or renewal of track under traffic conditions is limited to the replacement of worn, broken, or missing components or fastenings that do not affect the safe passage of trains.

(b) The following activities are expressly prohibited under traffic conditions:

(1) Any work that interrupts rail continuity, e.g., as in joint bar replacement or rail replacement;

(2) Any work that adversely affects the lateral or vertical stability of the track with the exception of spot tamping an isolated condition where not more than 15 lineal feet of track are involved at any one time and the ambient air temperature is not above 95 degrees Fahrenheit; and

(3) Removal and replacement of the rail fastenings on more than one tie at a time within 15 feet.

§ 213.311 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this subpart, evidence of rail movement, if any, that occurs while the track is loaded shall be added to the measurements of the unloaded track.

§ 213.317 Waivers.

(a) Any owner of track to which this subpart applies may petition the Federal Railroad Administrator for a waiver from any or all requirements prescribed in this subpart.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by §§ 211.7 and 211.9 of this chapter.

(c) If the Administrator finds that a waiver is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

§ 213.319 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 213.321 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not —

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals:

(1) Along the right of way, and

(2) At highway-rail crossings;

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

§ 213.323 Track gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table:

Class of track	The gage must be at least—	But not more than—	The change of gage within 31 feet must not be greater than—
6	4'8"	4'9¼"	½"
7	4'8"	4'9¼"	½"
8	4'8"	4'9¼"	½"
9	4'8¼"	4'9¼"	½"

§ 213327 Alinement.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points centered around that point and which are spaced according to the following table:

Chord length	Spacing
31'	7'9"
62'	15'6"
124'	31'0"

(b) For a single deviation, alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	½	¾	1½
7	½	½	1¼
8	½	½	¾
9	½	½	¾

(c) For three or more non-overlapping deviations from uniformity in track alinement occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the alinement of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	⅜	½	1
7	⅜	⅜	⅞
8	⅜	⅜	½
9	⅜	⅜	½

§ 213.329 Curves, elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be more than ½ inch lower than the inside rail.

(b) (1) The maximum allowable operating speed for each curve is determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches) [4].

D = Degree of curvature (degrees) [5].

3 = 3 inches of unbalance.

(2) Appendix A includes tables showing maximum allowable operating speeds computed in accordance with this formula for various elevations and degrees of curvature for track speeds greater than 90 m.p.h.

(c) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches) [4].

D = Degree of curvature (degrees) [5].

E_u = Unbalanced elevation (inches).

(d) Qualified equipment may be operated at curving speeds determined by the formula in paragraph (c) of this section, provided each specific class of equipment is approved for operation by

[4] Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve. If E_u exceeds 4 inches, the Vmax formula applies to the spirals on both ends of the curve.

[5] Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

the Federal Railroad Administration and the railroad demonstrates that—

(1) When positioned on a track with uniform superelevation, E_a, reflecting the intended target cant deficiency, E_u, no wheel of the equipment unloads to a value of 60 percent or less of its static value on perfectly level track and, for passenger-carrying equipment, the roll angle between the floor of the vehicle and the horizontal does not exceed 5.7 degrees.

(2) When positioned on a track with a uniform 7-inch superelevation, no wheel unloads to a value less than 60% of its static value on perfectly level track and, for passenger-carrying equipment, the angle, measured about the roll axis, between the floor of the vehicle and the horizontal does not exceed 8.6 degrees.

(e) The track owner shall notify the Federal Railroad Administrator no less than thirty calendar days prior to any proposed implementation of the higher curving speeds allowed when the "E_u" term, above, will exceed three inches. This notification shall be in writing and shall contain, at a minimum, the following information:

(1) A complete description of the class of equipment involved, including schematic diagrams of the suspension system and the location of the center of gravity above top of rail;

(2) A complete description of the test procedure [6] and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing;

(3) Procedures or standards in effect which relate to the maintenance of the suspension system for the particular class of equipment;

(4) Identification of line segment on which the higher curving speeds are proposed to be implemented.

(f) A track owner, or an operator of a passenger or commuter service, who provides passenger or commuter service over trackage of more than one track owner with the same class of equipment, may provide written notification to the Federal Railroad Administrator with the written consent of the other affected track owners.

§ 213.331 Track surface.

(a) For a single deviation in track surface, each owner of the track to which this subpart applies shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track			
	6 (inches)	7 (inches)	8 (inches)	9 (inches)
The deviation from uniform [1] profile on either rail at the midordinate of a 31-foot chord may not be more than	1	1	¾	½
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	1	1	1	¾
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¾	1½	1¼	1¼
The difference in crosslevel between any two points less than 62 feet apart may not be more than [2]	1½	1½	1½	1½

[1] Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement.

[2] However, to control harmonics on jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

(b) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the surface of the track within the limits prescribed for each deviation:

Track surface	Class of track			
	6 (inches)	7 (inches)	8 (inches)	9 (inches)
The deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not be more than	¾	¾	½	⅜
The deviation from uniform profile on either rail at the midordinate of a 62-foot chord may not be more than	¾	¾	¾	½
The deviation from uniform profile on either rail at the midordinate of a 124-foot chord may not be more than	1¼	1	⅞	⅞

§ 213.333 Automated vehicle inspection systems.

(a) For track Class 7, a qualifying Track Geometry Measurement System (TGMS) vehicle shall be operated at least twice within 120 calendar days with not less than 30 days between inspections. For track Classes 8 and 9, it shall be operated at least twice within 60 days with not less than 15 days between inspections.

(b) A qualifying TGMS shall meet or exceed minimum design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10,000 pounds per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval which shall not exceed 2 feet; and

(3) Calibration procedures and parameters are assigned to the system which assure that measured and recorded values accurately represent track conditions. Track geometry measurements recorded by the system shall not differ on repeated runs at the same site at the same speed more than 1/8 inch.

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters, at an interval of no more than every 2 feet,

[6] The test procedure may be conducted in a test facility whereby all wheels on one side (right or left) of the equipment are raised or lowered by six and then seven inches, the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the vehicle has been rotated.

which enables the system to determine compliance with: § 213.323, Track gage; § 213.327, Alinement; § 213.329, Curves; elevation and speed limitations; and § 213.331, Track surface.

(d) A qualifying TGMS shall be capable of producing, within 24 hours of the inspection, output reports that —

(1) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (c) of this section;

(2) Provide an exception report containing a systematic listing of all track geometry conditions which constitute an exception to the class of track over the segment surveyed.

(e) The output reports required under paragraph (c) of this section shall contain sufficient location identification information which enable field forces to easily locate indicated exceptions.

(f) Following a track inspection performed by a qualifying TGMS, the track owner shall, within two days after the inspection, field verify and institute remedial action for all exceptions to the class of track.

(g) The track owner shall maintain for a period of one year following an inspection performed by a qualifying TGMS, copy of the plot and the exception printout for the track segment involved, and additional records which:

(1) Specify the date the inspection was made and the track segment involved; and

(2) Specify the location, remedial action taken, and the date thereof, for all listed exceptions to the class.

(h) For track Classes 8 and 9, a qualifying Gage Restraint Measurement System (GRMS) shall be operated at least once annually with at least 180 days between inspections to continuously compare loaded track gage to unloaded gage under a known loading condition. The lateral capacity of the track structure shall not permit a gage widening ratio (GWR) greater than 0.5 inches.

(i) A GRMS shall meet or exceed minimum design requirements which specify that—

(1) Gage restraint shall be measured between the heads of the rail—

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10,000 pounds per rail;

(iii) Under an applied lateral load which provides for lateral/vertical load ratio of between 0.5 and 1.25 [7], and a load severity greater than 3,000 pounds but less than 8,000 pounds per rail. Load severity is defined by the formula—

$S = L - cV$

where:

S = Load severity, defined as the lateral load applied to the fastener system (pounds).

L = Actual lateral load applied (pounds).

c = Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

V = Actual vertical load applied (pounds).

(2) The measured gage value shall be converted to a gage widening ratio (GWR) as follows:

$$GWR = \frac{(LTG - UTG)}{L} \times 16{,}000$$

Where:

UTG=Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG=Loaded track gage measured by the GRMS vehicle at the point of application of the lateral load.

L=Actual lateral load applied (pounds).

(j) At least one vehicle in one train per day operating in Classes 8 and 9 shall be equipped with functioning on-board truck frame and carbody accelerometers. Each track owner shall have in effect written procedures for the notification of track personnel when on-board accelerometers on trains in Classes 8 and 9 indicate a possible track-related condition.

(k) For track Classes 7 , 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service or a portable device that monitors on-board instrumentation on trains shall be operated over the track at the revenue speed profile at a frequency of at least twice within 60 days with not less than 15 days between inspections. The instrumented car or the portable device shall monitor vertically and laterally oriented accelerometers placed near the end of the vehicle at the floor level. In addition, accelerometers shall be mounted on the truck frame. If the carbody lateral, carbody vertical, or truck frame lateral safety limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded.

(l) For track Classes 8 and 9, an instrumented car having dynamic response characteristics that are representative of other equipment assigned to service shall be operated over the track at the revenue speed profile annually with not less than 180 days between inspections. The instrumented car shall be equipped with functioning instrumented wheelsets to measure wheel/rail forces. If the wheel/rail force limits in the following table of vehicle/track interaction safety limits are exceeded, speeds will be reduced until these safety limits are not exceeded.

(m) The track owner shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (k) and (l) of this section.

VEHICLE/TRACK INTERACTION SAFETY LIMITS

Parameter	Safety limit	Filter/window	Requirements
Wheel/Rail Forces [1]			
Single Wheel Vertical Load Ratio	≥0.1	5 ft	No wheel of the equipment shall be permitted to unload to less than 10% of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track. The vertical wheel load limit shall be increased by the amount of measurement error.
Single Wheel L/V Ratio	≤ tanδ—.5 1 + .5tanδ	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall be less than the safety limit calculated for the wheel's flange angle (δ).

[7] GRMS equipment using load combinations developing L/V ratios which exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

VEHICLE/TRACK INTERACTION SAFETY LIMITS

Parameter	Safety limit	Filter/window	Requirements
Net Axle L/V Ratio	≤ 0.5	5 ft	The net lateral force exerted by any axle on the track shall not exceed 50% of the static vertical load that the axle exerts on the track.
Truck Side L/V Ratio	≤ 0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall be less than 0.6.
Accelerations			
Carbody Lateral[2]	≤ 0.5 g peak-to-peak	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one second time period, shall not exceed 0.5 g.
Carbody Vertical[2]	≤ 0.6 g peak-to-peak	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period, shall not exceed 0.6 g.
Truck Lateral[3]	≤ 0.4 g RMS mean-removed.	10 Hz 2 sec window.	Truck hunting[4] shall not develop below the maximum authorized speed.

[1] The lateral and vertical wheel forces shall be measured with instrumented wheelsets with the measurements processed through a low pass filter with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples/sec.
[2] Carbody lateral and vertical accelerations shall be measured near the car ends at the floor level.
[3] Truck accelerations in the lateral direction shall be measured on the truck frame. The measurements shall be processed through a filter having a pass band of 0.5 to 10 Hz.
[4] Truck hunting is defined as a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4 g root mean square (mean-removed) for 2 seconds.

§ 213.334 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will—

(a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;

(b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;

(c) Provide adequate drainage for the track; and

(d) Maintain proper track crosslevel, surface, and alinement.

§ 213.335 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened.

(b) Each 39 foot segment of track shall have—

(1) A sufficient number of crossties which in combination provide effective support that will—

(i) Hold gage within the limits prescribed in § 213.323(b);

(ii) Maintain surface within the limits prescribed in § 213.331; and

(iii) Maintain alinement within the limits prescribed in § 213.327.

(2) The minimum number and type of crossties specified in paragraph (c) of this section effectively distributed to support the entire segment; and

(3) Crossties of the type specified in paragraph (c) of this section that are(is) located at a joint location as specified in paragraph (e) of this section.

(c) For non-concrete tie construction, each 39 foot segment of Class 6 track shall have fourteen crossties; Classes 7, 8 and 9 shall have 18 crossties which are not—

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail can move laterally ⅜ inch relative to the crossties;

(4) Cut by the tie plate through more than 40 percent of a crosstie's thickness;

(5) Configured with less than 2 rail holding spikes or fasteners per tie plate; or

(6) So unable, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(d) For concrete tie construction, each 39 foot segment of Class 6 track shall have fourteen crossties, Classes 7, 8 and 9 shall have 16 crossties which are not—

(1) So deteriorated that the prestress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track;

(2) Configured with less than 2 fasteners on the same rail;

(3) So deteriorated in the vicinity of the rail fastener such that the fastener assembly may pull out or move laterally more than ⅜ inch relative to the crosstie;

(4) So deteriorated that the fastener base plate or base of rail can move laterally more than ⅜ inch relative to the crossties;

(5) So deteriorated that rail seat abrasion is sufficiently deep so as to cause loss of rail fastener toeload;

(6) Completely broken through; or

(7) So unable, due to insufficient fastener toeload, to maintain longitudinal restraint and maintain rail hold down and gage.

(e) Class 6 track shall have one non-defective crosstie whose centerline is within 18 inches of the rail joint location or two crossties whose center lines are within 24 inches either side of the rail joint location. Class 7, 8, and 9 track shall have two non-defective ties within 24 inches each side of the rail joint.

(f) For track constructed without crossties, such as slab track and track connected directly to bridge structural components, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

(g) In Classes 7, 8 and 9 there shall be at least three non-defective ties each side of a defective tie.

(h) Where timber crossties are in use there shall be tie plates under the running rails on at least nine of 10 consecutive ties.

(i) No metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ 213.337 Defective rails.

(a) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 213.305 shall determine whether or not the track may continue in use. If the person determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated—

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure			70	5	B.
			100	70	A2.
				100	A.
Compound fissure			70	5	B.
			100	70	A2.
				100	A.
Detail fracture Engine burn fracture Defective weld.			25	5	C.
			80	25	D.
			100	80	[A2] or [E and H.]
				100	[A] or [E and H].
Horizontal split head Vertical split head Split web Piped rail.	1	2			H and F.
	2	4			I and G.
	4				B.
Head web separation	(1)	(1)	(1)		A.
	½	1			H and F.
Bolt hole crack	1	1½			H and G.
	1½				A.
	(1)	(1)	(1)		A.
Broken base	1	6			D.
	6				[A] or [E and I].
Ordinary break					A or E.
Damaged rail					D.
Flattened rail	Depth ≥ ⅜ and				H.
	Length ≥ 8				

(1) Break out in rail head.

Notes:

A. Assign person designated under § 213.305 to visually supervise each operation over defective rail.

A2. Assign person designated under § 213.305 to make visual inspection. That person may authorize operation to continue without visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 213.305(a)(1)(i) or (ii). The operating speed cannot be over 30 m.p.h.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. Limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. When a search for internal rail defects is conducted under § 213.339 and defects are discovered which require remedial action C, the operating speed shall be limited to 50 m.p.h., for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.305(a)(1)(i) or (ii) until joint bars are applied; thereafter, limit speed to 50 m.p.h.

E. Apply joint bars to defect and bolt in accordance with § 213.351(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h.

I. Limit operating speed over defective rail to 30 m.p.h.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or

through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

(5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(7) *Broken base* means any break in the base of the rail.

(8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.

(9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(10) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.

(11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.

(12) *Flattened rail* means a short length of rail, not a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint shall be reported as separate defects.

(14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ 213.339 Inspection of rail in service.

(a) A continuous search for internal defects shall be made of all rail in track at least twice annually with not less than 120 days between inspections.

(b) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(c) Each defective rail shall be marked with a highly visible marking on both sides of the web and base.

(d) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under § 213.337(a).

(e) If a valid search for internal defects cannot be conducted for reasons described in paragraph (d) of this section, the track owner shall, before the expiration of time limits—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 miles per hour until such time as a valid search for internal defects can be made; or

(3) Remove the rail from service.

§ 213.341 Initial inspection of new rail and welds.

The track owner shall provide for the initial inspection of newly manufactured rail, and for initial inspection of new welds made in either new or used rail. A track owner may demonstrate compliance with this section by providing for:

(a) *In-service inspection*—A scheduled periodic inspection of rail and welds that have been placed in service, if conducted in accordance with the provisions of § 213.339, and if conducted not later than 90 days after installation, shall constitute compliance with paragraphs (b) and (c) of this section;

(b) *Mill inspection*—A continuous inspection at the rail manufacturer's mill shall constitute compliance with the requirement for initial inspection of new rail, provided that the inspection equipment meets the applicable requirements specified in § 213.339. The track owner shall obtain a copy of the manufacturer's report of inspection and retain it as a record until the rail receives its first scheduled inspection under § 213.339;

(c) *Welding plant inspection*—A continuous inspection at a welding plant, if conducted in accordance with the provisions of paragraph (b) of this section, and accompanied by a plant operator's report of inspection which is retained as a record by the track owner, shall constitute compliance with the requirements for initial inspection of new rail and plant welds, or of new plant welds made in used rail; and

(d) *Inspection of field welds*—An initial inspection of field welds, either those joining the ends of CWR strings or those made for isolated repairs, shall be conducted not less than one day and not more than 30 days after the welds have been made. The initial inspection may be conducted by means of portable test equipment. The track owner shall retain a record of such inspections until the welds receive their first scheduled inspection under § 213.339.

(e) Each defective rail found during inspections conducted under paragraph (a) or (d) of this section shall be marked with highly visible markings on both sides of the web and base and the remedial action as appropriate under § 213.337 will apply.

§ 213.343 Continuous welded rail (CWR).

Each track owner with track constructed of CWR shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration within six months following the effective date of this rule. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when —

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral and/or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify —

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.305(c) of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records shall include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

(1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation of 5 inches measured with a 62-foot chord. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/kinky rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.

(12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ 213.345 Vehicle qualification testing.

(a) All rolling stock types which operate at Class 6 speeds and above shall be qualified for operation for their intended track classes in order to demonstrate that the vehicle dynamic response to track alinement and geometry variations are within acceptable limits to assure safe operation. Rolling stock operating in Class 6 within one year prior to the promulgation of this subpart shall be considered as being successfully qualified for Class 6 track and vehicles presently operating at Class 7 speeds by reason of conditional waivers shall be considered as qualified for Class 7.

(b) The qualification testing shall ensure that, at any speed less than 10 m.p.h. above the proposed maximum operating speed, the equipment will not exceed the wheel/rail force safety limits and the truck lateral accelerations

specified in § 213.333, and the testing shall demonstrate the following:

(1) The vertical acceleration, as measured by a vertical accelerometer mounted on the car floor, shall be limited to no greater than 0.55g single event, peak-to-peak.

(2) The lateral acceleration, as measured by a lateral accelerometer mounted on the car floor, shall be limited to no greater than 0.3g single event, peak-to-peak; and

(3) The combination of the lateral acceleration (L) and the vertical acceleration (V) within any period of two consecutive seconds as expressed by the square root of $(V^2 + L^2)$ shall be limited to no greater than 0.604, where L may not exceed 0.3g and V may not exceed 0.55g.

(c) To obtain the test data necessary to support the analysis required in paragraphs (a) and (b) of this section, the track owner shall have a test plan which shall consider the operating practices and conditions, signal system, road crossings and trains on adjacent tracks during testing. The track owner shall establish a target maximum testing speed (at least 10 m.p.h. above the maximum proposed operating speed) and target test and operating conditions and conduct a test program sufficient to evaluate the operating limits of the track and equipment. The test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from acceptable Class 6 limits to the target maximum test speeds. The test shall be suspended at that speed where any of the safety limits specified in paragraph (b) are exceeded.

(d) At the end of the test, when maximum safe operating speed is known along with permissible levels of cant deficiency, an additional run shall be made with the subject equipment over the entire route proposed for revenue service at the speeds the railroad will request FRA to approve for such service and a second run again at 10 m.p.h. above this speed. A report of the test procedures and results shall be submitted to FRA upon the completions of the tests. The test report shall include the design flange angle of the equipment which shall be used for the determination of the lateral to vertical wheel load safety limit for the track/vehicle interaction safety measurements required per § 213.333(k).

(e) As part of the submittal required in paragraph (d) of the section, the operator shall include an analysis and description of the signal system and operating practices to govern operations in Classes 7 and 8. This statement shall include a statement of sufficiency in these areas for the class of operation. Operation at speeds in excess of 150 m.p.h. is authorized only in conjunction with a rule of particular applicability addressing other safety issues presented by the system.

(f) Based on test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service.

§ 213.347 Automotive or railroad crossings at grade.

(a) There shall be no at-grade (level) highway crossings, public or private, or rail-to-rail crossings at-grade on Class 8 and 9 track.

(b) If train operation is projected at Class 7 speed for a track segment that will include rail-highway grade crossings, the track owner shall submit for FRA's approval a complete description of the proposed warning/barrier system to address the protection of highway traffic and high speed trains. Trains shall not operate at Class 7 speeds over any track segment having highway-rail grade crossings unless:

(1) An FRA-approved warning/barrier system exists on that track segment; and

(2) All elements of that warning/barrier system are functioning.

§ 213.349 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table—

Class of track	Any mismatch of rails at joints may not be more than the following—	
	On the tread of the rail ends (inch)	On the gage side of the rail ends (inch)
Class 6, 7, 8 and 9	1/8	1/8

§ 213.351 Rail joints.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) Each rail shall be bolted with at least two bolts at each joint.

(e) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this section do not apply. Those locations, when over 400 feet long, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this subpart.

(f) No rail shall have a bolt hole which is torch cut or burned.

(g) No joint bar shall be reconfigured by torch cutting.

§ 213.352 Torch cut rail.

(a) Except as a temporary repair in emergency situations no rail having a torch cut end shall be used. When a rail end with a torch cut is used in emergency situations, train speed over that rail shall not exceed the maximum allowable for Class 2 track. All torch cut rail ends in Class 6 shall be removed within six months of September 21, 1998.

(b) Following the expiration of the time limits specified in paragraph (a) of this section, any torch cut rail end not removed shall be removed within 30 days of discovery. Train speed over that rail shall not exceed the maximum allowable for Class 2 track until removed.

§ 213.353 Turnouts, crossovers and lift rail assemblies or other transition devices on moveable bridges.

(a) In turnouts and track crossings, the fastenings must be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels. Use of rigid rail crossings at grade is limited per § 213.347.

(b) Track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. Elastic fasteners designed to restrict longitudinal rail movement are considered rail anchoring.

(c) Each flangeway at turnouts and track crossings shall be at least 1½ inches wide.

(d) For all turnouts and crossovers, and lift rail assemblies or other transition devices on moveable bridges, the track owner shall prepare an inspection and maintenance Guidebook for use by railroad employees which shall be submitted to the Federal Railroad Administration. The Guidebook shall contain at a minimum—

(1) Inspection frequency and methodology including limiting measurement values for all components subject to wear or requiring adjustment.

(2) Maintenance techniques.

(e) Each hand operated switch shall be equipped with a redundant operating mechanism for maintaining the security of switch point position.

§ 213.355 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage—The distance between the gage line of a frog to the guard line[1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	Guard face gage—The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 6 track	4′ 6½″	4′ 5″
Class 7 track	4′ 6½″	4′ 5″
Class 8 track	4′ 6½″	4′ 5″
Class 9 track	4′ 6½″	4′ 5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.
[2] A line ⅝ inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

§ 213.357 Derails.

(a) Each track, other than a main track, which connects with a Class 7, 8 or 9 main track shall be equipped with a functioning derail of the correct size and type, unless railroad equipment on the track, because of grade characteristics cannot move to foul the main track.

(b) For the purposes of this section, a derail is a device which will physically stop or divert movement of railroad rolling stock or other railroad on-track equipment past the location of the device.

(c) Each derail shall be clearly visible. When in a locked position, a derail shall be free of any lost motion which would prevent it from performing its intended function.

(d) Each derail shall be maintained to function as intended.

(e) Each derail shall be properly installed for the rail to which it is applied.

(f) If a track protected by a derail is occupied by standing railroad rolling stock, the derail shall be in derailing position.

(g) Each derail on a track which is connected to a Class 7, 8 or 9 main track shall be interconnected with the signal system.

§ 213.359 Track stiffness.

(a) Track shall have a sufficient vertical strength to withstand the maximum vehicle loads generated at maximum permissible train speeds, cant deficiencies and surface defects. For purposes of this section, vertical track strength is defined as the track capacity to constrain vertical deformations so that the track shall return following maximum load to a configuration in compliance with the vehicle/track interaction safety limits and geometry requirements of this subpart.

(b) Track shall have sufficient lateral strength to withstand the maximum thermal and vehicle loads generated at maximum permissible train speeds, cant deficiencies and lateral alinement defects. For purposes of this section lateral track strength is defined as the track capacity to constrain lateral deformations so that track shall return following maximum load to a configuration in compliance with the vehicle/track interaction safety limits and geometry requirements of this subpart.

§ 213.361 Right of way.

The track owner in Class 8 and 9 shall submit a barrier plan, termed a "right-of-way plan," to the Federal Railroad Administration for approval. At a minimum, the plan will contain provisions in areas of demonstrated need for the prevention of—

(a) Vandalism;

(b) Launching of objects from overhead bridges or structures into the path of trains; and

(c) Intrusion of vehicles from adjacent rights of way.

§ 213.365 Visual inspections.

(a) All track shall be visually inspected in accordance with the schedule prescribed in paragraph (c) of this section by a person designated under § 213.305.

(b) Each inspection shall be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 miles per hour when passing over track crossings and turnouts, otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When riding over the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector is riding;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspector's visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors are riding;

(3) Each main track is actually traversed by the vehicle or inspected on foot at least once every two weeks, and each siding is actually traversed by the vehicle or inspected on foot at least once every month. On high density commuter railroad lines where track time does not permit an on track vehicle inspection, and where track centers are 15 foot or less, the requirements of this paragraph (b)(3) will not apply; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each track inspection shall be made in accordance with the following schedule—

Class of track	Required frequency
6, 7, and 8.	Twice weekly with at least 2 calendar-day's interval between inspections.
9	Three times per week.

(d) If the person making the inspection finds a deviation from the requirements of this part, the person shall immediately initiate remedial action.

(e) Each switch, turnout, crossover, and lift rail assemblies on moveable bridges shall be inspected on foot at least weekly. The inspection shall be accomplished in accordance with the Guidebook required under § 213.353.

(f) In track Classes 8 and 9, if no train traffic operates for a period of eight hours, a train shall be operated at a speed not to exceed 100 miles per hour over the track before the resumption of operations at the maximum authorized speed.

§ 213.367 Special inspections.

In the event of fire, flood, severe storm, temperature extremes or other occurrence which might have damaged track structure, a special inspection shall be made of the track involved as soon as possible after the occurrence and, if possible, before the operation of any train over that track.

§ 213.369 Inspection records.

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart.

(b) Except as provided in paragraph (e) of this section, each record of an inspection under § 213.365 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of record which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

(c) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.339(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administrator.

(e) For purposes of compliance with the requirements of this section, an owner of track may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system be designed such that the integrity of each record maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part, shall be made available for inspection and copying by the FRA and track inspectors responsible under § 213.305. Such paper copies shall be made available to the track inspectors and at the locations specified in paragraph (b) of this section.

(7) Track inspection records shall be kept available to persons who performed the inspection and to persons performing subsequent inspections.

(f) Each vehicle/track interaction safety record required under § 213.333 (g), and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Appendix A to Part 213—Maximum Allowable Curving Speeds

TABLE 1.—THREE INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
	Maximum allowable operating speed (mph)												
0°30′	93	100	107	113	120	125	131	136	141	146	151	156	160
0°40′	80	87	93	98	103	109	113	118	122	127	131	135	139
0°50′	72	78	83	88	93	97	101	106	110	113	117	121	124
1°00′	66	71	76	80	85	89	93	96	100	104	107	110	113
1°15′	59	63	68	72	76	79	83	86	89	93	96	99	101
1°30′	54	58	62	66	69	72	76	79	82	85	87	90	93
1°45′	50	54	57	61	64	67	70	73	76	78	81	83	86
2°00′	46	50	54	57	60	63	66	68	71	73	76	78	80
2°15′	44	47	50	54	56	59	62	64	67	69	71	74	76
2°30′	41	45	48	51	54	56	59	61	63	66	68	70	72
2°45′	40	43	46	48	51	54	56	58	60	62	65	66	68
3°00′	38	41	44	46	49	51	54	56	58	60	62	64	66

TABLE 1.—THREE INCHES UNBALANCE—Continued

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
3°15′	36	39	42	45	47	49	51	54	56	57	59	61	63
3°30′	35	38	40	43	45	47	50	52	54	55	57	59	61
3°45′	34	37	39	41	44	46	48	50	52	54	55	57	59
4°00′	33	35	38	40	42	44	46	48	50	52	54	55	57
4°30′	31	33	36	38	40	42	44	45	47	49	50	52	54
5°00′	29	32	34	36	38	40	41	43	45	46	48	49	51
5°30′	28	30	32	34	36	38	40	41	43	44	46	47	48
6°00′	27	29	31	33	35	36	38	39	41	42	44	45	46
6°30′	26	28	30	31	33	35	36	38	39	41	42	43	45
7°00	25	27	29	30	32	34	35	36	38	39	40	42	43
8°00′	23	25	27	28	30	31	33	34	35	37	38	39	40
9°00′	22	24	25	27	28	30	31	32	33	35	36	37	38
10°00′	21	22	24	25	27	28	29	31	32	33	34	35	36
11°00′	20	21	23	24	26	27	28	29	30	31	32	33	34
12°00′	19	20	22	23	24	26	27	28	29	30	31	32	33

TABLE 2.—FOUR INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	8
	Maximum allowable operating speed (mph)												
0°30′	107	113	120	125	131	136	141	148	151	156	160	165	169
0°40′	93	98	104	109	113	118	122	127	131	135	139	143	148
0°50′	83	88	93	97	101	106	110	113	117	121	124	128	131
1°00′	76	80	85	89	93	98	100	104	107	110	113	116	120
1°15′	68	72	76	79	83	86	89	93	96	99	101	104	107
1°30′	62	65	69	72	76	79	82	85	87	90	93	95	98
1°45′	57	61	64	67	70	73	76	78	81	83	86	88	90
2°00′	53	57	60	63	65	68	71	73	76	78	80	82	85
2°15′	50	53	56	59	62	64	87	69	71	73	76	78	80
2°30′	48	51	53	56	59	61	63	65	68	70	72	74	76
2°45′	48	48	51	53	56	58	60	62	64	68	68	70	72
3°00′	44	46	49	51	53	56	58	60	62	64	65	67	69
3°15′	42	44	47	49	51	53	55	57	59	81	63	65	68
3°30′	40	43	45	47	49	52	53	55	57	59	61	62	64
3°45′	39	41	44	46	48	50	52	53	55	57	59	60	62
4°00′	38	40	42	44	46	48	50	52	53	55	57	58	60
4°30′	36	38	40	42	44	45	47	49	50	52	53	55	56
5°00′	34	36	38	40	41	43	45	46	48	49	51	52	53
5°30′	32	34	36	38	39	41	43	44	46	47	48	50	51
6°00′	31	33	35	36	38	39	41	42	44	45	46	48	49
6°30′	30	31	33	35	36	38	39	41	42	43	44	46	47
7°00′	29	30	32	34	35	36	38	39	40	42	43	44	45
8°00′	27	28	30	31	33	34	35	37	38	39	40	41	42
9°00′	25	27	28	30	31	32	33	35	36	37	38	39	40
10°00′	24	25	27	28	29	30	32	33	34	35	36	37	38
11°00′	23	24	25	27	28	29	30	31	32	33	34	35	36
12°00′	22	23	24	26	27	28	29	30	31	32	33	34	35

Appendix B to Part 213—Schedule of Civil Penalties

Section	Violation	Willful Violation[1]
Subpart A—General:		
213.4(a) Excepted track[2]	$2,500	$5,000
213.4(b) Excepted track[2]	2,500	5,000
213.4(c) Excepted track[2]	2,500	5,000
213.4(d) Excepted track[2]	2,500	5,000
213.4(e):		
(1) Excepted track[2]	5,000	7,500
(2) Excepted track[2]	7,000	10,000
(3) Excepted track[2]	7,000	10,000
(4) Excepted track[2]	5,000	7,500
213.4(f) Excepted track	2,000	4,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	1,000	2,000
213.9 Classes of track: Operating speed limits	2,500	2,500
213.11 Restoration or renewal of track under traffic conditions	2,500	2,500
213.13 Measuring track not under load	1,000	2,000
Subpart B—Roadbed:		
213.33 Drainage	2,500	5,000
213.37 Vegetation	1,000	2,000

Section	Violation	Willful Violation [1]
Subpart C—Track Geometry:		
213.53 Gage	5,000	7,500
13.55 Alinement	5,000	7,500
213.57 Curves; elevation and speed limitations	2,500	5,000
213.59 Elevation of curved track; runoff	2,500	2,500
213.63 Track surface	5,000	7,500
Subpart D—Track surface:		
213.103 Ballast; general	2,500	5,000
213.109 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties	1,000	2,000
(d) Joint ties	2,500	5,000
(e) Track constructed without crossties	2,500	5,000
213.113 Defective rails	5,000	7,500
213.115 Rail end mismatch	2,500	5,000
213.119 Continuous welded rail		
(a) through (h)	5,000	7,500
213.121 (a) Rail joints	2,500	5,000
213.121 (b) Rail joints	2,500	5,000
213.121 (c) Rail joints	5,000	7,500
213.121 (d) Rail joints	2,500	5,000
213.121 (e) Rail joints	2,500	5,000
213.121 (f) Rail joints	2,500	5,000
213.121 (g) Rail joints	2,500	5,000
213.121 (h) Rail joints	5,000	7,500
213.122 Torch cut rail	2,500	5,000
213.123 Tie plates	1,000	2,000
213.127 Rail fastenings	2,500	5,000
213.133 Turnouts and track crossings, generally	1,000	1,000
213.135 Switches:		
(a) through (g)	2,500	5,000
(h) chipped or worn points	5,000	7,500
213.137 Frogs	2,500	5,000
213.139 Spring rail frogs	2,500	5,000
213.141 Self-guarded frogs	2,500	5,000
213.143 Frog guard rails and guard faces; gage	2,500	5,000
Subpart E—Track appliances and track-related devices:		
213.205 Derails	2,500	5,000
Subpart F—Inspection:		
213.233 Track inspections	2,000	4,000
213.235 Switches, crossings, transition devices	2,000	4,000
213.237 Inspection of rail	2,500	5,000
213.239 Special inspections	2,500	5,000
213.241 Inspection records	1,000	1,000
Subpart G—High Speed:		
213.305 Designation of qualified individuals; general qualifications	1,000	2,000
213.307 Class of track; operating speed limits	2,500	5,000
213.309 Restoration or renewal of track under traffic conditions	2,500	5,000
213.311 Measuring track not under load	1,000	2,000
213.319 Drainage	2,500	5,000
213.321 Vegetation	1,000	2,000
213.323 Track gage	5,000	7,500
213.327 Alinement	5,000	7,500
213.329 Curves, elevation and speed limits	2,500	5,000
213.331 Track surface	5,000	7,500
213.333 Automated vehicle inspection systems	5,000	7,500
213.335 Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties, non-concrete	1,000	2,000
(d) Sufficient number of nondefective concrete ties	1,000	2,000
(e) Joint ties	2,500	5,000
(f) Track constructed without crossties	2,500	5,000
(g) Non-defective ties surrounding defective ties	2,500	5,000
(h) Tie plates	2,500	5,000
(i) Tie plates	1,000	2,000
213.337 Defective rails	5,000	7,500
213.339 Inspection of rail in service	2,500	5,000
213.341 Inspection of new rail	2,500	5,000
213.343 Continuous welded rail (a) through (h)	5,000	7,500
213.345 Vehicle qualification testing (a) through (b)	5,000	7,500
(c) through (e)	2,500	5,000

Section	Violation	Willful Violation [1]
213.347 Automotive or railroad crossings at grade	5,000	7,500
213.349 Rail end mismatch	2,500	5,000
213.351 (a) Rail joints	2,500	5,000
213.351 (b) Rail joints	2,500	5,000
213.351 (c) Rail joints	5,000	7,500
213.351 (d) Rail joints	2,500	5,000
213.351 (e) Rail joints	2,500	5,000
213.351 (f) Rail joints	5,000	7,500
213.351 (g) Rail joints	5,000	7,500
213. 352 Torch cut rails	2,500	5,000
213.353 Turnouts, crossovers, transition devices	1,000	2,000
213.355 Frog guard rails and guard faces; gage	2,500	5,000
213.357 Derails	2,500	5,000
213.359 Track stiffness	5,000	7,500
213.361 Right of way	5,000	7,500
213.365 Visual inspections	2,500	5,000
213.367 Special inspections	2,500	5,000
213.369 Inspections records	2,000	4,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

[2] In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of Part 213 until such noncompliance is remedied.

Issued in Washington, D.C. on June 10, 1998.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 98–15932 Filed 6–19–98; 8:45 am]

BILLING CODE 4910–06–P

federal register

Monday
June 22, 1998

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation (FAR);
Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–05; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–05 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Subcontract Consent	95–011	Klein.
II	Availability of Specifications	97–034	DeStefano.
III	Liquidated Damages	89–042/97–300	Moss.
IV	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts	97–042	DeStefano.
V	Rehabilitation Act, Workers With Disabilities (Interim)	96–610	O'Neill.
VI	Trade Agreements Thresholds	97–044	Linfield.
VII	Restrictions on Purchases from Sudan	97–301	Linfield.
VIII	Software Copyrights	97–614	O'Neill.
IX	Travel Reimbursement	97–007	Nelson.
X	No-Cost Value Engineering Change Proposals (Interim)	96–011	Klein.
XI	Technical Amendments.		
XII	Availability of FAR via Internet.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–05 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Subcontract Consent (FAR Case 95–011)

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

Item II—Availability of Specifications (FAR Case 97–034)

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update addresses and other information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

Item III—Liquidated Damages (FAR Cases 89–042 and 97–300)

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84–50, FAR case 89–042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97–042)

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97–02 eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222–36 has been increased from $2,500 to $10,000.

Item VI—Trade Agreements Thresholds (FAR Case 97–044)

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

Item VII—Restrictions on Purchases from Sudan (FAR Case 97–301)

This final rule amends FAR 25.701 and the clause at 52.225–11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 997.

Item VIII—Software Copyrights (FAR Case 97–614)

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

Item IX—Travel Reimbursement (FAR Case 97–007)

The interim rule published as Item IX of FAC 97–03 is converted to a final rule without change. The rule amends FAR 31.205–46 to increase from $25.00 to $75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

Item X—No-Cost Value Engineering Change Proposals (FAR Case 96–011)

This interim rule revises FAR 48.104–3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item XI—Technical Amendments

Amendments are being made at FAR 5.201(b)(2), 8.404(a), 31.002, and 45.607–2(b) to update references and make editorial changes.

Item XII—Availability of FAR via Internet

The FAR, along with Federal Acquisition Circulars and other informational items, is available on the Internet at http://www.arnet.gov/far.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

June 22, 1998.

Federal Acquisition Circular (FAC) 97–05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97–05 are effective August 21, 1998, except for Items V, X, and XI, which are effective June 22, 1998.

Dated: June 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: June 11, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: June 10, 1998.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 98–16111 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 35, 36, 44, and 52

[FAC 97–05; FAR Case 95–011; Item I]

RIN 9000–AH57

Federal Acquisition Regulation; Subcontract Consent

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reduce requirements for consent to subcontract. The rule eliminates the consent requirements for contractors that have an approved purchasing system, except when specific subcontracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 95–011.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 21, 1997 (62 FR 19465). Comments were received from nine respondents. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the consent to subcontract requirement has a very small administrative cost that is passed along to the Government as part of the contract price, and this rule reduces the requirement for consent to subcontract.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of the information collection requirements was submitted to the Office of Management and Budget (OMB) and approved through June 30, 2000, under OMB Control Number 9000–0149. Public comments concerning this request were invited through **Federal Register** notice 62 FR 19465, April 21, 1997, and no comments were received.

List of Subjects in 48 CFR Parts 4, 22, 35, 36, 44, and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 4, 22, 35, 36, 44, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 22, 35, 6, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

4.705–3 [Amended]

2. Section 4.705–3 is amended in paragraph (f) by revising the parenthetical to read "(see 52.244–2)".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.810 [Amended]

3. Section 22.810 is amended in paragraph (g) by removing the phrase "paragraph (a), (b), or (c) of 44.204" and adding in its place "44.204(a)".

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

4. Section 35.009 is amended by revising the last sentence to read as follows:

35.009 Subcontracting research and development effort.

* * * The clause at 52.244–2, Subcontracts, prescribed for certain types of contracts at 44.204(a), requires the contracting officer's prior approval for the placement of certain subcontracts.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. Section 36.606 is amended by revising paragraph (e) to read as follows:

36.606 Negotiations.

* * * * *

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see 52.244–4), limits a firm's subcontracting to firms agreed upon during negotiations.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

6. Section 44.000 is revised to read as follows:

44.000 Scope of part.

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review, evaluation, and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of subpart 44.2 are not applicable to prime contracts for commercial items acquired pursuant to part 12.

44.102 [Removed]

7. Section 44.102 is removed.

44.201 Consent and advance notification requirements.

8. The heading of section 44.201 is revised to read as set forth above.

9. Sections 44.201–1 and 44.201–2 are revised to read as follows:

44.201–1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (*e.g.*, subcontracts for engines on a prime contract for airframes).

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for—

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and

(2) Fixed-price subcontracts that exceed—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.

(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see part 51) constitutes consent.

44.201–2 Advance notification requirements.

Under cost-reimbursement contracts, even if the contractor has an approved purchasing system and consent to subcontract is not required under 44.201–1, the contractor is required by statute (10 U.S.C. 2306(e) or 41 U.S.C. 254(b)) to notify the agency before the award of—

(a) Any cost-plus-fixed-fee subcontract; or

(b) Any fixed-price subcontract that exceeds—

(1) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(2) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

44.201–3 and 44.201–4 [Removed]

10. Sections 44.201–3 and 44.201–4 are removed.

11. Section 44.202–1 is amended by revising paragraphs (b) and (c) to read as follows:

44.202–1 Responsibilities.

* * * * *

(b) The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244–2. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (k) of the clause at 52.244–2.

44.202–2 [Amended]

12. Section 44.202–2 is amended in the introductory text of paragraph (a) by adding ", at a minimum," after the word "shall".

13. Section 44.204 is revised to read as follows:

44.204 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.244–2, Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A letter contract that exceeds the simplified acquisition threshold;

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or

(v) A labor-hour contract that exceeds the simplified acquisition threshold.

(2) If a cost-reimbursement contract is contemplated—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate II.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244–4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in fixed-price architect-engineer contracts.

(c) The contracting officer shall, when contracting by negotiation, insert the clause at 52.244–5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is contemplated.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.244–1 [Removed and Reserved]

14. Section 52.244–1 is removed and reserved.

15. Section 52.244–2 is revised to read as follows:

52.244–2 Subcontracts.

As prescribed in 44.204(a)(1), insert the following clause:

SUBCONTRACTS (AUG 1998)

(a) *Definitions.* As used in this clause—

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245–18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

_____

_____

_____

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

_____

_____

_____

(End of clause)

Alternate I (Aug 1998). As prescribed in 44.204(a)(2)(i), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

Alternate II (Aug 1998). As prescribed in 44.204(a)(2)(ii), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

52.244–3 [Removed and reserved]

16. Section 52.244–3 is removed and reserved.

17. Section 52.244–4 is amended by revising the section heading, introductory paragraph, and clause heading and date to read as follows:

52.244–4 Subcontractors and outside associates and consultants (Architect-engineer services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

* * * * *

(End of clause)

52.244–5 [Amended]

18. Section 52.244–5 is amended in the introductory paragraph by revising "44.204(e)" to read "44.204(c)".

[FR Doc. 98–16112 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 11, and 52

[FAC 97–05; FAR Case 97–034; Item II]

RIN 9000–AI00

Federal Acquisition Regulation; Availability of Specifications

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update information regarding the availability of specifications, standards, and item descriptions cited in Government solicitations and contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–05, FAR case 97–034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. New organization names, addresses, and telephone numbers, and a new method of obtaining information on the World Wide Web have been added. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 11, and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 9, 11, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 11, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.203 is amended by revising paragraphs (c)(1) and (d) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(c) * * *

(1) Federal Standardization Manual, FSPM–0001.

* * * * *

(d) The publications listed in paragraphs (b) and (c) of this section are sold to the public. The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the addressee in 11.201(d)(1). The publications in paragraphs (b)(2) and (c)(2) of this section may be obtained from the addressee in 11.201(d)(2).

PART 11—DESCRIBING AGENCY NEEDS

3. Section 11.102 is revised to read as follows:

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance

with the guidance contained in the Federal Standardization Manual, FSPM–0001, and, for DoD components, DoD 4120.3–M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.3–M may be obtained from DoD (see address in 11.201(d)(2)).

4. Section 11.201 is amended by revising paragraph (d) and the first sentence of paragraph (e) to read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d)(1) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, may be purchased from the—General Services Administration, Federal Supply Service, Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925.

(2) The DoDISS may be purchased from the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179.

(e) Agencies may generally obtain from the GSA Specifications Section or DoDSSP those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. * * *

5. Section 11.204 is amended by revising paragraphs (a) and (b) to read as follows:

11.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, in solicitations that cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12–L, in solicitations that cite specifications listed in the DoDISS or DoD 5010.12–L that are not furnished with the solicitation.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Sections 52.211–1 and 52.211–2 are revised to read as follows:

52.211–1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29.

As prescribed in 11.204(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101–29 (AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—GSA Federal Supply Service, Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925, Facsimile (202) 619–8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.211–2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12–L.

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12–L (AUG 1998)

(a) Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained for a fee by submitting a request to the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(b) Order forms, pricing information, and customer support information may be obtained—

(1) By telephone at (215) 697–2667/2179; or

(2) Through the DoDSSP Internet site at http://www.dodssp.daps.mil.

(End of provision)

7. Section 52.212–1 is amended by revising the date of the provision and paragraph (i) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS (AUG 1998)

* * * * *

(i) *Availability of requirements documents cited in the solicitation.* (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619–8925, Facsimile (202) 619–8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the—Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, Telephone (215) 697–2667/2179, Facsimile (215) 697–1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained—

(A) By telephone at (215) 697–2667/2179; or

(B) Through the DoDSSP Internet site at http://www.dodssp.daps.mil.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

* * * * *

(End of provision)

[FR Doc. 98–16113 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 19, 52, and 53

[FAC 97–05; FAR Cases 89–042 and 97–300; Item III]

RINs 9000–AD20 and 9000–AH53

Federal Acquisition Regulation; Liquidated Damages

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed and interim rules adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the proposed and interim rules to final with changes. This final rule amends the Federal Acquisition Regulation (FAR) to clarify policy on liquidated damages and commercial subcontracting plans and to implement OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published as FAR case 89–042 at 54 FR 30708, July 21, 1989, has been merged with this final rule. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–05, FAR case 97–300.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule, under FAR Case 89–042 (Liquidated Damages), was published on July 21, 1989 (54 FR 30708), to require a prime contractor to pay liquidated damages upon a finding of a lack of good faith effort to meet small business subcontracting goals. The rule implemented Section 304 of the Business Opportunity Development Reform Act of 1988, Pub. L. 100–656. The interim rule is hereby adopted as final with changes and merged with this final rule.

A proposed rule containing revisions to the interim rule was published on April 11, 1997 (62 FR 17960). The revisions in the proposed rule resulted from the public comments received on the interim rule, and from the requirements of OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items.

Eight sources submitted comments in response to the proposed rule. All comments were considered in developing this final rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business concerns are exempt from subcontracting plan requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11, 19, 52, and 53

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final with Changes

Accordingly, the interim rule published as FAR Case 89–042 amending 48 CFR Parts 19 and 52, which was published at 54 FR 30708, July 21, 1989, is hereby adopted as final and merged with this final rule with the following changes:

1. The authority citation for 48 CFR Parts 11, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.501 is revised to read as follows:

11.501 General.

This subpart provides policies and procedures for the use of liquidated damages clauses in solicitations and contracts for supplies, services, and construction, except for the Liquidated Damages—Subcontracting Plan clause at 52.219–16, which may be applied pursuant to 19.705–7.

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.701 is revised to read as follows:

19.701 Definitions.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Failure to make a good faith effort to comply with the subcontracting plan means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Small business subcontractor means any concern that—

(a) In connection with subcontracts of $10,000 or less, has a number of employees, including its affiliates, that does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000, has a number of employees or average annual receipts, including its affiliates, that does not exceed the size standard under 19.102 for the product or service it is providing on the subcontract.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

4. Section 19.702 is amended by revising paragraph (a) introductory text,

the first sentences of (a)(1) and (a)(2); and paragraph (b)(4) to read as follows:

19.702 Statutory requirements.

* * * * *

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan.

* * *

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. * * *

(b) * * *

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses, *e.g.*, contracts awarded before the enactment of Pub. L. 95–507).

* * * * *

5. Section 19.703 is amended in paragraph (a)(2) by removing "13 CFR 124.601—124.610" and inserting in its place "13 CFR 124.601 through 124.610"; and in paragraph (b) by revising the first sentence to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business concern, a small disadvantaged business concern, or a women-owned small business concern. * * *

6. Section 19.704 is amended—

(a) By redesignating paragraphs (a)(2) through (a)(6) as (a)(7) through (a)(11), respectively, and adding new paragraphs (a)(2) through (a)(6);

(b) In newly designated (a)(8) by removing the word "will" the second time it appears;

(c) By revising newly designated paragraphs (a)(9), 10) and (11), the first sentence of paragraph (b), and (c); and

(d) By adding paragraph (d). The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small, small disadvantaged and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small, small disadvantaged and women-owned small business concerns;

(4) A description of the method used to develop the subcontracting goals;

(5) A description of the method used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, small disadvantaged and women-owned small business concerns;

* * * * *

(9) Assurances that the offeror will include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (see 19.708(b));

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295; and

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see 19.701) that contains all the elements required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals.

* * *

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see 19.705–2(a)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. The contractor shall—

(1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period; and

(2) Submit a new commercial plan, 30 working days before the end of the fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan. When the new commercial plan is approved, the contractor shall provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan.

19.705–1 [Amended]

7. Section 19.705–1 is amended in the first sentence by removing "award fee" and inserting "award-fee" in its place.

8. Section 19.705–4 is amended—

(a) By revising the first and second sentences of paragraph (b);

(b) By revising paragraph (c);

(c) By revising paragraph (d)(1); and

(d) By redesignating paragraphs (d)(3) through (d)(6) as (d)(4) through (d)(7), respectively, and adding a new paragraph (d)(3); and by revising newly designated (d)(5). The new and revised text reads as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the 11 required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that incorporates the required elements within the time allotted, the bidder shall be ineligible for award. * * *

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the 11 elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged, and women-owned small business subcontractors to the maximum practicable extent. The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219–10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged or women-owned small businesses.

(d) * * *

(1) Obtain information available from the cognizant contract administration office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

* * * * *

(3) Ensure that the subcontracting goals are consistent with the offeror's cost or pricing data or information other than cost or pricing data.

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

* * * * *

9. Section 19.705–6 is amended by revising the introductory text and paragraphs (b) and (g) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

* * * * *

(b) Forwarding a copy of each commercial plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located.

* * * * *

(g) Taking action to enforce the terms of the contract upon receipt of a notice under 19.706(f).

10. Section 19.705–7 is amended by revising paragraphs (b) and (c); the last sentence of paragraph (d) and paragraph (f); and by adding paragraph (h) to read as follows:

19.705–7 Liquidated damages.

* * * * *

(b) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

(c) If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to meet its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly. If the contracting officer decides in accordance with paragraph (d) of this subsection that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(d) * * * However, when considered in the context of the contractor's total effort in accordance with its plan, the following, though not all inclusive, may be considered as indicators of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged or women-owned small business concerns; a failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan; a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; or the adoption of company policies or procedures that have as their objectives the frustration of the objectives of the plan.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not

made a good faith effort to comply with the plan, and document the results of the review;

(3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the contracting officer shall ask the contractor to provide—

(i) Contract numbers for the Government contracts subject to the plan;

(ii) The total Government sales during the contractor's fiscal year; and

(iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and

(4) When appropriate, assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts. For example: The contractor's total actual sales were $50 million and its actual subcontracting was $20 million. The Government's total payments under contracts subject to the plan contributing to the contractor's total sales were $5 million, which accounted for 10 percent of the contractor's total sales. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of $20 million, or $2 million. To continue the example, if the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of $2 million, or $20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan.

* * * * *

(h) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

11. Section 19.706 is amended in paragraph (a) by removing the paragraph designation "(a)"; by removing paragraph (b); by redesignating (a)(1) through (a)(6) as (a) through (f), respectively; in newly designated (e) by removing "and" at the end; in newly designated (f) by removing the period at the end and inserting "; and"; and by adding (g) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(g) Immediate notice that performance under a contract is complete, that the goals were or were not met, and, if not met, whether there is any indication of a lack of a good faith effort to comply with the subcontracting plan.

12. Section 19.708 is amended by revising paragraph (b)(2); in the first sentence of (c)(1) by removing "(see 19.702(a)(1))" and inserting in its place "(see 19.702)"; and in the second sentence of (c)(2) by removing "award fee" and inserting in its place "award-fee". The revised text reads as follows:

19.708 Solicitation provisions and contract clauses.

* * * * *

(b) ** * *

(2) The contracting officer shall insert the clause at 52.219–16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or the clause with its Alternate I or II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.219–9 is amended by revising the clause date and paragraphs (b), (d)(2)(i), (d)(9), (d)(10), the first sentence of (d)(11) introductory text, and the second sentence of (d)(11)(vi); in the second sentence of (e)(1) by revising "contractor's" to read "Contractor's"; and by revising (f) introductory text and (g). The revised text reads as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1998)

* * * * *

(b) *Definitions.* As used in this clause—

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

* * * * *

(d) * * *

(2) * * *

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

* * * * *

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. * * *

* * * * *

(vi) * * * Contractors having commercial plans need not comply with this requirement.

* * * * *

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan

required of the offeror by this clause; provided—

* * * * *

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

* * * * *

(End of clause)

* * * * *

14. Section 52.219–16 is amended by revising the clause date, paragraph (b), the first sentence of (c), and paragraph (d) to read as follows:

52.219–16 Liquidated Damages—Subcontracting Plan.

* * * * *

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (AUG 1998)

* * * * *

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. * * *

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

* * * * *

(End of clause)

PART 53—FORMS

53.219 [Amended]

15. Section 53.219 is amended in paragraphs (a) and (b) by removing "(REV. 10/96)" and inserting "(Rev. 8/98)", and by revising the citation "19.704(a)(5)" to read "19.704(a)(10)"

16. Section 53.301–294 is revised to read as follows:

53.301–294 Standard Form 294, Subcontracting Report for Individual Contracts.

BILLING CODE 6820–EP–P

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY ☐ GSA ☐ NASA
☐ NAVY ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*

☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT

a. AGENCY'S OR CONTRACTOR'S NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 6-98)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Raports ars due 30 days after the close of aach reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been ravised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial itam in Section 2.101 of the Federal Acquisiton Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV. 8-98) BACK

17. Section 53.301–295 is revised to read as follows:

53.301–295 Standard Form 295, Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 06/30/2000

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD: ☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT ☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ GSA ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*

☐ PRIME CONTRACTOR ☐ BOTH ☐ SUBCONTRACTOR

8. TYPE OF PLAN

☐ INDIVIDUAL ☐ COMMERCIAL

IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI)* *(Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable)* *(Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

16. CHIEF EXECUTIVE OFFICER

a. NAME | c. SIGNATURE

b. TITLE | d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV. 8-98)
Prescribed by GSA - FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commerical item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan, including goals, that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 8-98) BACK

[FR Doc. 98–16114 Filed 6–19–98; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97–05; FAR Case 97–042; Item IV]

RIN 9000–AI01

Federal Acquisition Regulation; Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify fee limitations pertaining to cost-reimbursement contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–05, FAR case 97–042.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. Federal Acquisition Circular 97–02, FAR Part 15 Rewrite, published as a final rule on September 30, 1997 (62 FR 51224), eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming amendments to FAR Part 16.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–042), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 16 is amended as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

16.301–3 [Amended]

2. Section 16.301–3 is amended by removing paragraph (a)(3).

3. Section 16.306 is amended by revising paragraph (c) to read as follows:

16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 15.404–4(c)(4)(i) and 16.301–3.

* * * * *

16.405–2 [Amended]

4. Section 16.405–2 is amended at the end of paragraph (c)(1) by adding "and"; by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

[FR Doc. 98–16115 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAC 97–05; FAR Case 96–610; Item V]

RIN 9000–AH99

Federal Acquisition Regulation; Rehabilitation Act, Workers With Disabilities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective June 22, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.96–610@gsa.gov.

Please cite FAC 97–05, FAR case 96–610 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, rocurement Analyst, at (202) 501–3856. Please cite FAC 97–05, FAR case 96–610.

SUPPLEMENTARY INFORMATION:

A. Background

On May 1, 1996, the Department of Labor (DoL) issued a final rule (61 FR 19335) to revise its regulations (41 CFR 60–741) that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). The rule was effective August 29, 1996. This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to conform to the DoL regulations.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely implements existing Department of Labor regulations, and imposes no new requirements. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 96–610), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule amends the FAR to conform to Department of Labor regulations at 41 CFR 60–741 that implement Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793). Immediate publication is necessary to ensure that Government contractors take affirmative action required by statute to employ, and advance in employment, qualified individuals with disabilities. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 22 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.14—Employment of Workers With Disabilities

2. The heading of Subpart 22.14 is revised to read as set forth above.

3. Sections 22.1401 and 22.1402 are revised to read as follows:

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified individuals with disabilities, without discrimination based on their physical or mental disability.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of $10,000 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222–36, Affirmative Action for Workers with Disabilities, implements the Act.

(b) The requirements of the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

4. Section 22.1403 is amended by revising paragraph (a) introductory text; in (b)(1) by revising "Director of OFCCP" to read "Deputy Assistant Secretary"; in (b)(2) and the first sentence of (d) by revising "Director" to read "Deputy Assistant Secretary"; and in the last sentence of (d) by removing the word "calendar". The revised text reads as follows:

22.1403 Waivers.

(a) The agency head, with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), may waive any or all of the terms of the clause at 52.222–36, Affirmative Action for Workers with Disabilities, for—

* * * * *

5. Section 22.1404 is revised to read as follows:

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

22.1405 [Amended]

6. Section 22.1405 is amended in the first sentence by replacing "Handicapped Workers" with "Workers with Disabilities".

22.1406 [Amended]

7. Section 22.1406 is amended by revising "OFCCP" to read "Deputy Assistant Secretary for Federal Contract Compliance" the first time it appears.

8. Section 22.1407 is amended by revising the introductory paragraph to read as follows:

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222–36, Affirmative Action for Workers with Disabilities. These sanctions (see 41 CFR 60–741.66) may include—

* * * * *

9. Section 22.1408 is amended by revising paragraph (a) introductory text and (a)(1) to read as follows:

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed $10,000 or are expected to exceed $10,000, except when—

(1) Work is to be performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, *United States* includes the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island); or

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212–5 is amended by revising the date of the clause and paragraphs (b)(8) and (e)(3) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Jun 1998)

* * * * *

(b) * * *

(8) 52.222–36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

* * * * *

(e) * * *

(3) 52.222–36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

* * * * *

(End of clause)

11. Section 52.213–4 is amended by revising the clause date and paragraph (b)(1)(iv) of the clause to read as follows:

52.213–4 Terms and Conditions Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Jun 1998)

* * * * *

(b)(1) * * *

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over $10,000).

* * * * *

12. Section 52.222–36 is revised to read as follows:

52.222–36 Affirmative Action for Workers With Disabilities.

As prescribed in 22.1408(a), insert the following clause:

Affirmative Action for Workers With Disabilities (Jun 1998)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Jun 1998). As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [List term(s)].

[FR Doc. 98–16116 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 97–05; FAR Case 97–044; Item VI]

RIN 9000–AI02

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–05, FAR case 97–044.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the

meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–044), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.105 is amended by revising paragraph (e) to read as follows:

25.105 Evaluating offers.

* * * * *

(e) The evaluation in paragraph (a) of this section shall not be applied to offers of Canadian end products above $25,000 or Mexican end products above $53,150 (see 25.402(a)(3)(ii)). For the definitions of "Canadian end product" and "Mexican end product," see 25.401.

25.202, 25.207, 25.305, 25.402, 25.408, 25.1002, and 25.1003 [Amended]

3. In the list below, for each section listed in the left column, remove the dollar amount indicated in the middle column, and add the dollar amount indicated in the right column:

Section	Remove	Add
25.202(d)	$6,500,000	$6,909,500
	7,311,000 (twice)	7,143,000 (twice)
25.207(d)(1)	7,311,000	7,143,000
25.207(d)(2)	6,500,000	6,909,500
	7,311,000	7,143,000
25.305(c)(2)	6,500,000	6,909,500
25.402(a)(1)	190,000	186,000
	7,311,000	7,143,000
25.402(a)(3)(i)	6,500,000	6,909,500
25.402(a)(3)(ii)	50,000	53,150
25.402(g)	50,000	53,150
	6,500,000	6,909,500
25.408(a)(3)	50,000	53,150
25.408(a)(4)	50,000	53,150
25.1002(a)(1)	190,000	186,000
25.1002(a)(2)	7,311,000	7,143,000
25.1002(a)(3)(i)	190,000	186,000
25.1003(a)	190,000	186,000
25.1003(b)(1)	190,000	186,000

[FR Doc. 98–16117 Filed 6–19–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–05; FAR Case 97–301; Item VII]

RIN 9000–AI03

Federal Acquisition Regulation; Restrictions on Purchases From Sudan

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add Sudan to the list of countries from which Government acquisition of supplies and services is restricted. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–05, FAR case 97–301.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 25.701 and 52.225–11 by adding Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 1997 (62 FR 59989, November 5, 1997).

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Section 25.701 is amended in paragraph (a)(4) by removing "or"; in (a)(5) by removing the period and inserting "; or" in its place; and by adding (a)(6) to read as follows:

25.701 Restrictions.

(a) * * *

(6) Sudan (Executive Order 13067).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213–4 [Amended]

3. Section 52.213–4 is amended by revising the date of the clause to read "(Aug 1998)"; and in paragraph (a)(2)(i) of the clause by removing "(Oct 1996)" and inserting "(Aug 1998)" in its place.

4. Section 52.225–11 is amended by revising the date of the clause and paragraph (a) to read as follows:

52.225–11 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Aug 1998)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

* * * * *

[FR Doc. 98–16118 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 27

[FAC 97–05; FAR Case 97–614; Item VIII]

RIN 9000–AI04

Federal Acquisition Regulation; Software Copyrights

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that computer software produced under Government contracts may be special works to which the Government may obtain copyright. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAC 97–05, FAR case 97–614.

SUPPLEMENTARY INFORMATION:

A. Background

The definition of "data" to which the FAR clause at 52.227–17, Rights in Data—Special Works, applies includes computer software. However, FAR 27.405, which provides guidance for use of the clause, does not include computer software among its examples of special works. This final rule clarifies that the Government may use the clause to retain copyright to certain computer software produced under Government contracts, when appropriate.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–05, FAR case 97–614), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 27

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 27 is amended as set forth below:

PART 27—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for 48 CFR Part 27 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 27.405 is amended in paragraph (a)(1)(vii) by removing "or" at the end of (a)(1)(viii) by removing the period and inserting "; or" in its place; and adding paragraph (a)(1)(ix) to read as follows:

27.405 Other data rights provisions.

(a) *Production of special works.* (1)

* * *

(ix) The development of computer software programs, where the program—

(A) May give a commercial advantage; or;

(B) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

* * * * *

[FR Doc. 98–16119 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 97–05; FAR Case 97–007; Item IX]

RIN 9000–AH76

Federal Acquisition Regulation; Travel Reimbursement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to convert the interim rule published as Item IX of Federal Acquisition Circular 97–03 at 62 FR 64932, December 9, 1997, to a final rule without change. The rule amends the Federal Acquisition Regulation (FAR) to increase from $25 to $75 the threshold at which contractor personnel must provide a receipt to support travel expenditures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–05, FAR case 97–007.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** on December 9, 1997 (62 FR 64932). The interim rule amended FAR 31.205–46 to increase from $25 to $75 the threshold at which contractor personnel must provide a receipt to support travel expenditures. Public comments were received from one source. All comments were considered in developing the final rule. The interim rule is converted to a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. Since the threshold at which contractor personnel must provide a receipt to support travel expenditures has been increased, a request to decrease the burden hours previously approved under Office of Management and Budget (OMB) Control Number 9000–0088 was submitted to OMB under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through **Federal Register** notice dated December 9, 1997 (62 FR 64932). No public comments were received.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 31, which was published at 62 FR 64932, December 9, 1997, is adopted as a final rule without change.

The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 98–16120 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAC 97–05; FAR Case 96–011; Item X]

RIN 9000–AH37

Federal Acquisition Regulation; No-Cost Value Engineering Change Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective June 22, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.96–011@gsa.gov.

Please cite FAC 97–05, FAR case 96–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAC 97–05, FAR case 96–011.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule clarifies that the no-cost VECP guidance at FAR 48.104–3 permits the use of no-cost settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings, and when, in the contracting officers judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule could reduce the number of no-cost VECP settlements negotiated between the Government and private entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule clarifies that the guidance at FAR 48.104–3, Sharing alternative—no-cost settlement method, permits use of no-cost VECPs settlements when the contracting officer has balanced the administrative costs of negotiating a settlement against the anticipated savings; and, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. The no-cost VECP alternative was not intended for use when significant cost savings are anticipated on the instant contract.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat at the address above. Comments are invited. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR Case 96–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to preclude misinterpretation and misuse of existing guidance and resulting VECP settlements that do not provide the Government with appropriate consideration. However, pursuant to Pub. L. 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 48 is amended as set forth below:

PART 48—VALUE ENGINEERING

1. The authority citation for 48 CFR Part 48 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 48.104–3 is revised to read as follows:

48.104–3 Sharing alternative—no-cost settlement method.

In selecting an appropriate mechanism for incorporating a VECP into a contract, the contracting officer shall analyze the different approaches available to determine which one would be in the Government's best interest. Contracting officers should balance the administrative costs of negotiating a settlement against the anticipated savings. A no-cost settlement may be used if, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from concurrent contracts placed with other sources, savings from all future contracts, and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECPs.

[FR Doc. 98–16121 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 8, 31, 45, and 53

[FAC 97–05; Item XI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 22, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 5, 8, 31, 45, and 53

Government procurement.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 8, 31, 45, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 8, 31, 45, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.201 [Amended]

2. Section 5.201 is amended in paragraph (b)(2) by revising "(see 5.205(d))" to read "(see 5.205(e))".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

3. Section 8.404 is amended in the first sentence of paragraph (a) by revising "13.202(c)(3)" to read "13.303–2(c)(3)".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.002 [Amended]

4. Section 31.002 is amended by revising "Guidance for New Contractors" to read "Information for Contractors".

PART 45—GOVERNMENT PROPERTY

45.607–2 [Amended]

5. Section 45.607–2 is amended in the third sentence of paragraph (b) by revising "DLA:SIP" to read "DLSC–LC".

PART 53—FORMS

6. Section 53.101 is amended by revising the last sentence to read as follows:

§ 53.101 Requirements for use of forms.

* * * The specific location of each requirement is identified in subpart 53.2.

[FR Doc. 98–16122 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 97–05 which amends the FAR. Further information regarding these rules may be obtained by referring to FAC 97–05 which precedes this document. The FAC, including this document, may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97–05

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Item I—Subcontract Consent (FAR Case 95–011)

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

Item II—Availability of Specifications (FAR Case 97–034)

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211–1, 52.211–2, and 52.212–1 to update addresses and other information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

Item III—Liquidated Damages (FAR Cases 89–042 and 97–300)

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) and OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84–50, FAR case 89–042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97–042)

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97–02 eliminated non-statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96–610)

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212–5 and 52.222–36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222–36 has been increased from $2,500 to $10,000.

Item VI—Trade Agreements Thresholds (FAR Case 97–044)

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

Item VII—Restrictions on Purchases From Sudan (FAR Case 97–301)

This final rule amends FAR 25.701 and the clause at 52.225–11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 1997.

Item VIII—Software Copyrights (FAR Case 97–614)

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

Item IX—Travel Reimbursement (FAR Case 97–007)

The interim rule published as Item IX of FAC 97–03 is converted to a final rule without change. The rule amends FAR 31.205–46 to increase from $25.00 to $75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

Item X—No-Cost Value Engineering Change Proposals (FAR Case 96–011)

This interim rule revises FAR 48.104–3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Dated: June 11, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–16123 Filed 6–19–98; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Monday
June 22, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Interim Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0426]

Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts. This rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS-451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105-115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. These provisions of FDAMA supplement the petition process for nutrient content and health claims provided by section 403(r)(4) (21 U.S.C. 343(r)(4)) and §§ 101.69 and 101.70 (21 CFR 101.69 and 101.70, respectively) by providing an alternative for establishing the scientific basis for such claims by reliance on authoritative statements.

FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. The notification must contain specific information including: (1) The exact wording of the prospective nutrient content claim or health claim; (2) a concise description of the basis upon which the petitioner relied for determining that the requirements of section 403(r)(2)(G)(i) of the act for nutrient content claims or section 403(r)(3)(C)(i) for health claims have been satisfied; (3) a copy of the authoritative statement that serves as the basis for the claim; and (4) a balanced representation of the scientific literature relating to the nutrient level for a prospective nutrient content claim or relating to the relationship between the nutrient and the disease or health-related condition for a prospective health claim. For a prospective nutrient content claim, the authoritative statement must identify the nutrient level to which the claim refers. For a prospective health claim, the authoritative statement must be a statement about the relationship between a nutrient and a disease or health-related condition to which the claim refers. For both types of claims, the authoritative statement must be currently in effect and it must have been published either by a scientific body of the U.S. Government that has official responsibility for public health protection or research directly relating to human nutrition (e.g., the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC)) or by the National Academy of Sciences (NAS) or any of its subdivisions (hereinafter referred to as a "scientific body").

Under new section 403(r)(2)(H) and (r)(3)(D) of the act, such a claim may be made beginning 120 days after submission of the notification until: (1) FDA has issued an effective regulation that prohibits or modifies the claim; (2) the agency has issued a regulation finding that the requirements under section 403(r)(2)(G) for a prospective nutrient content claim or under section 403(r)(3)(C) for a prospective health claim have not been met; or (3) a district court of the United States in an enforcement proceeding under chapter III of the act has determined that the requirements under section 403(r)(2)(G) for a prospective nutrient content claim or under section 403(r)(3)(C) for a prospective health claim have not been met. During the 120 days following submission of a notification and before the claim may appear on a food, the agency may also notify any person who is making the claim that the notification did not include all of the required information.

Section 304 of FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and for dietary supplements because section 304 amended section 403(r)(2) of the act, which provides for nutrient content claims on both conventional foods and dietary supplements. Section 303 of FDAMA does not include provisions for health claims for dietary supplements based on authoritative statements, however. In particular, section 403(r)(5)(D) of the act (21 U.S.C. 343(r)(5)(D)) specifies that health claims for dietary supplements shall not be subject to section 403(r)(3) of the act, but rather to a procedure and standard that FDA establishes by regulation. In section 303 of FDAMA, Congress amended section 403(r)(3) of the act, which provides for procedures and standards for health claims for conventional foods, to allow for health claims based on authoritative statements for conventional foods, but Congress did not amend section 403(r)(5)(D) of the act.

Therefore, FDA believes that section 403(r)(3)(C) of the act authorizes use of a health claim based on an authoritative statement only on any conventional food that provides an appropriate level of the nutrient that is the subject of the health claim, that does not exceed the disqualifying levels identified in § 101.14(a)(5) (21 CFR 101.14(a)(5)), and that otherwise complies with section 403(r)(3)(C) and all other provisions of the act. Nevertheless, FDA has tentatively concluded that, for health claims authorized via the authoritative statement procedure provided by FDAMA, conventional foods and dietary supplements should be subject to the same standards and procedures. This position is consistent with the agency's final rule that made dietary supplements subject to the same general

requirements as apply to conventional foods with respect to health claims (59 FR 395, January 4, 1994). This approach is also consistent with the guidance of the Commission on Dietary Supplement Labels, which stated in its 1997 report (Ref. 1) that the process for the approval of health claims should remain the same for dietary supplements and conventional foods. Therefore, FDA intends to issue a proposed rule to provide for health claims based on authoritative statements for dietary supplements.

A. Authoritative Statements

Sections 303 and 304 of FDAMA authorize the use of a health or nutrient content claim based, in part, on an "authoritative statement." In particular, new section 403(r)(3)(C)(i) and (r)(2)(G)(i) of the act states that such claims are authorized and may be made when "a scientific body * * * has published an authoritative statement, which is currently in effect." For a health claim, section 403(r)(3)(C)(i) of the act requires that the statement must be "about the relationship between a nutrient and a disease or health-related condition to which the claim refers." For a nutrient content claim, section 403(r)(2)(G)(i) of the act requires that the statement must be one "that identifies the nutrient level to which the claim refers."

Section 403(r)(3)(C) and (r)(2)(G) of the act further requires that:

> * * * [a] statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include the statement of an employee of the scientific body made in the individual capacity of the employee.

Although Congress did not explicitly define the term "authoritative statement," section 403(r)(3)(C) and (r)(2)(G) of the act and the legislative history clarify several characteristics that Congress intended an "authoritative statement" to have. Most significantly, to be the basis for a health or nutrient content claim, a statement must: (1) Address certain subjects, namely, for a health claim, it must be about the relationship between a nutrient and a disease or health-related condition to which the claim refers, or, for a nutrient content claim, it must identify the nutrient level to which the claim refers; (2) be published by an appropriate scientific body and represent its official position, and may not be, for example, a statement of individual employees of the scientific body made in the individual capacities of the employees; (3) be based on a deliberative review of the scientific evidence on the subject of the statement and not indicate that the scientific evidence about the subject of the statement is preliminary or inconclusive; and (4) be currently in effect. The aspects of these requirements relevant to this rulemaking, and its companion rulemakings publishing elsewhere in this issue of the Federal Register, are discussed in greater detail in section I.A.1 of this document.

1. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Address One of Two Subjects

For a statement to be eligible for consideration as an "authoritative statement," it must address certain subjects. Section 403(r)(3)(C) of the act provides that, for a health claim, it must be "about the relationship between a nutrient and a disease or health-related condition to which the claim refers." Section 403(r)(2)(G) of the act provides that, for a nutrient content claim, it must "identify the nutrient level to which the claim refers."

There are several aspects to these requirements. First, a statement cannot be an "authoritative statement" under section 403(r)(2)(G) or (r)(3)(C) of the act if it identifies no nutrient level or if it is not about the relationship between a nutrient and a disease or health-related condition. For example, if a statement refers to no nutrient, to no disease or health-related condition, or to neither a nutrient nor a disease or health-related condition, it cannot be an authoritative statement under section 403(r)(3)(C) of the act. Second, if a statement is "about the relationship between a nutrient and a disease or health-related condition," or if it "identif[ies] the nutrient level," it must be about the relationship or nutrient "to which the claim refers." Moreover, the statement must be about the relationship between a nutrient and a disease or health-related condition in humans or it must identify a nutrient level for total daily consumption by humans.

When evaluating what relationship a statement is about, or what nutrient level a statement identifies, it may be necessary to consider the context in which the statement appears. It is likely that a submitter will identify excerpted sentences as an "authoritative statement." The context in which these excerpted sentences appears can be relevant when determining the subject of the statement. For example, sentences immediately adjoining the excerpted sentences or in a summary statement in the document may clarify the disease that is the subject of the excerpted sentences.

Accordingly, the statutory requirement in section 403(r)(3)(C)(ii)(II) and (r)(2)(G)(ii)(II) of the act that a notification include "a copy of the statement referred to in subclause (i) upon which [the] person [who submitted the notification] relied in making the claim," means that the entire document from which the statement is excerpted should be included in a notification. The agency notes that submission of the entire document is also relevant to other determinations under section 403(r)(3)(C) and (r)(2)(G), such as whether the scientific evidence about the relationship or nutrient level at issue is preliminary or inconclusive, as discussed in section I.A.3 of this document, and whether a health or nutrient content claim is "stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in subclause (i)," as required by section 403(r)(3)(C)(iv) and (r)(2)(G)(iv) of the act.

2. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Be Published by an Appropriate Scientific Body and Represent the Official Policy of That Body.

Section 403(r)(3)(C) and (r)(2)(G) of the act requires that an "authoritative statement" be "published." The agency understands the use of "published" in section 403(r)(3)(C)(i) and (r)(2)(G)(i) to mean that the statement must be publicly available in print form (paper or electronic).

The identical last sentence of section 403(r)(3)(C) and (r)(2)(G) of the act states that:

> * * * [a] statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include the statement of an employee of the scientific body made in the individual capacity of the employee.

"Published" as used in this sentence means that the scientific body can be considered to be the author of the statement, in that the statement represents the official policy of the scientific body. Of course, the statements of scientific bodies—indeed, of organizations generally—are authored by individuals. Yet statements that are merely those of individual employees made in the individual capacities of the employees are not statements that have been authored by, and so represent the official policy of, the scientific body. Similarly, in the case of Federal scientific bodies with subdivisions, such as NIH and CDC, section 403(r)(3)(C) and (r)(2)(G) indicates that the scientific body, and not merely the subdivision, can be considered to have "published" a statement within the

meaning of those sections only if, as the legislative history indicates, "statements issued by entities such as NIH and CDC reflect consensus within those institutions" (H. Conf. Rept. 105–399, at 98 (1997)). Accordingly, to be considered an "authoritative statement" under section 403(r)(3)(C) and (r)(2)(G), a statement must represent the official policy of a scientific body.

3. To Be the Basis for a Health or Nutrient Content Claim, a Statement Must Be Based on a Deliberative Review of the Scientific Evidence on the Subject of the Statement, and It Should Not Indicate That the Scientific Evidence Is Preliminary or Inconclusive

In section 403(r)(3)(C)(i) and (r)(2)(G)(i) of the act, Congress required that claims may be authorized only when "a scientific body * * * has published an *authoritative statement*," not merely when a scientific body has published a statement (emphasis added). The use of "authoritative" here indicates that a statement may not be the basis for a health or nutrient content claim merely because its source is a scientific body, an authority on the subject of the statement. A review of the legislative history of sections 303 and 304 of FDAMA indicates that, to be "authoritative," Congress intended that a statement must be the product of a deliberative review of the scientific evidence on the subject of the statement. In addition, the statement should not indicate that the scientific evidence about the subject of the statement is preliminary or inconclusive.

Congress intended both that claims based on authoritative statements should have "a presumption of validity" (H. Rept. 105–306, at 16 and 17 (1997)) and that "more *scientifically sound* nutrition information * * * be provided to consumers through health and nutrient content claims" based on authoritative statements (H. Conf. Rept. 105–399, at 98 (1997) (emphasis added); see also H. Rept. 105–306, at 16 (1997) and S. Rept. 105–43, at 49 (1997)).

When FDA authorizes a health claim by regulation under section 403(r)(3)(B) of the act or establishes a Daily Value that can serve as the basis for a nutrient content claim, it conducts a deliberative review of the scientific evidence about the relationship between a nutrient and a disease or health-related condition or about the nutrient level at issue and concludes that there is significant scientific agreement about the relationship or appropriate scientific consensus about the nutrient level. Congress intended that an "authoritative statement" published by a scientific body could be the basis for health and nutrient content claims because the "authoritative statement" is to serve as a presumptive surrogate for FDA's deliberative review of the scientific evidence.

Congress therefore intended that an "authoritative statement" must be the product of a deliberative review of the scientific evidence on the subject of the statement. For example, the House Report states that:

> [a]uthoritative scientific bodies, as part of their official responsibilities for public health protection, regularly undertake deliberative reviews of the scientific evidence to evaluate potential diet/disease relationships, and issue authoritative statements concerning such relationships.

(H. Rept. 105–306, at 16 (1997)). The Senate Report repeats this idea, noting that scientific bodies engage in:

> * * * deliberative processes * * * in issuing statements on matters of public health. Important Federal public health organizations, as part of their official responsibilities, routinely review the scientific evidence pertinent to diet and disease relationships, and publish statements developed through such reviews.

(S. Rept. 105–43, at 49 (1997)).

Moreover, only a statement that a relationship between a nutrient and a disease or health-related condition exists or that identifies a level of a nutrient—and not merely statements about a possible relationship or level—can serve as the basis for claims that will provide consumers with scientifically sound information. Only a claim based on such a statement can be accorded a presumption of validity.

Accordingly, a statement that indicates, for example, that research about a nutrient level or a relationship between a nutrient and a disease or health-related condition is preliminary or inconclusive, that indicates that such a relationship or a nutrient level is or should be the subject of ongoing scientific study, or that indicates the direction for future research about such a relationship or a nutrient level is not "authoritative." When evaluating whether a statement about a relationship or nutrient level indicates that the scientific evidence is preliminary or inconclusive, the agency intends to consider the context in which the statement appears, as discussed in section I.A.1 of this document. For example, a statement of excerpted sentences might not indicate that research is preliminary or that there are unresolved questions that require additional study, but such qualifiers could be found elsewhere in the document.

The agency notes that, even if a statement meets the criteria to be an "authoritative statement," Congress also provided under new section 403(r)(3)(D)(i) of the act that FDA have the authority to prohibit a health claim based on an authoritative statement when there is not significant scientific agreement that there is a relationship between the nutrient and the disease or health-related condition in question. As the Senate Report on the provision explains, in an agency rulemaking to prohibit or modify a health claim based on an authoritative statement, "the standards and criteria for health claims prescribed by section 403(r)(3) and implementing regulations, including the significan[t] scientific agreement standard, would be fully applicable" (S. Rept. 105–43, at 51 (1997); see also H. Rept. 105–306, at 15 (1997)).

With respect to nutrient content claims, Congress indicated that the agency is to determine "whether the authoritative statement upon which the notification is based is supported by scientific consensus to the extent * * * appropriate to allow the claim" (H. Rept. 105–306, at 17–18 (1997)), an evaluation that FDA would make under section 403(r)(2)(H) of the act, after the Federal scientific body that is the source of a statement determines that the statement reflects consensus within it, as discussed in section I.A.2 of this document.

B. Review Process

As allowed by sections 303 and 304 of FDAMA, health claims and nutrient content claims based on authoritative statements from Federal scientific bodies or NAS may be made on foods in interstate commerce as soon as 120 days after submission of a notification of the claim to FDA. Upon receipt of a notification, FDA intends to review the notification to determine whether the components specified in section 403(r)(2)(G) and (r)(3)(C) are present within the submission packet. When such components are missing, FDA intends to notify the submitter by letter identifying one or more of these components that is absent from the notification packet.

If the necessary components are present, FDA intends to determine, for a health claim, what relationship between a nutrient and disease or health-related condition is at issue, or, for a nutrient content claim, what nutrient is at issue. If, by regulation under section 403(r)(3)(B) of the act, the agency has already authorized a health claim about the relationship at issue, then the notification provisions of section 403(r)(3)(C) of the act may not be used to modify the existing health claim or to authorize the prospective health claim. Similarly, if by rulemaking the

agency has already established a Daily Value for the nutrient at issue, then the notification provisions of section 403(r)(2)(G) of the act may not be used to modify the existing Daily Value. Instead, a health claim about the relationship at issue or a nutrient content claim referring to the nutrient at issue may be made when the claim is consistent with the existing health claim regulation or with the established Daily Value and the authorized terms for nutrient content claims. Furthermore, if the prospective claim refers to a relationship or a nutrient that is not addressed by the statement that is identified as the "authoritative statement" on which the claim is based, then section 403(r)(3)(C) and (r)(2)(G) of the act does not authorize the health or nutrient content claim at issue. In each case, FDA intends to notify the submitter by letter that use of the claim is not authorized under section 403(r)(3)(C) or (r)(2)(G) of the act, as appropriate.

If, however, a prospective claim could be authorized based on an appropriate authoritative statement, and if the prospective claim refers to a relationship or nutrient that is addressed by the statement that is identified in the notification as the "authoritative statement," FDA then intends to evaluate further whether the statement is an "authoritative statement." In particular, FDA intends to determine for a statement, as a threshold matter, whether: (1) It may be attributable to a scientific body or to one or more of its employees; (2) it is publicly available in print form (paper or electronic); and (3) the statement indicates that the scientific evidence about the relationship between a nutrient and a disease or health-related condition or a nutrient level is preliminary or inconclusive. With respect to the first of these issues, FDA notes that it can determine that a statement from a non-Federal body or agency—such as a state university school of public health—is not an "authoritative statement," or that a statement from a scientist who was not an employee of an appropriate scientific body is not an "authoritative statement." As a general matter, however, only a scientific body can state whether a statement that is attributable to it or to one or more of its employees actually represents the official policy of the scientific body or not, and FDA would therefore consult with the scientific body if necessary.

If a statement fails to meet any of these criteria, FDA would normally conclude that the statement is not an authoritative statement. In any case the agency may, and, when a statement meets these three criteria, the agency would normally, consult with the scientific body to which the statement is attributed. FDA would request that the scientific body determine, for example, whether the statement is currently in effect; whether the statement represents the official policy of the scientific body, for example, by reflecting consensus within that body, as opposed to being the statement of individual employees made in the individual capacities of those employees; and whether the statement is based on a deliberative review of the scientific evidence.

If the statement is found to be issued by an appropriate scientific body and determined to be an "authoritative statement" under section 403(r)(2)(G) or (r)(3)(C) of the act, the agency intends to review the wording of the claim to determine if it is in accordance with section 403(r)(3)(C)(iv) or (r)(2)(G)(iv) of the act. These provisions of the act require that the claim be stated in a manner so that it is an accurate representation of the authoritative statement and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

For health claims, FDA also intends to consider the requirement of section 403(r)(3)(C)(iii) of the act that there be compliance with, for example, sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)), which require that the claim be truthful and not misleading, including compliance as appropriate with existing § 101.14. FDA would also determine whether there is significant scientific agreement concerning the authoritative statement, as provided for under new section 403(r)(3)(D)(i) of the act. For nutrient content claims, FDA intends to consider the requirements of section 403(r)(2)(G)(iii) of the act that there be compliance with, for example, section 403(r)(2)(A)(i) of the act, which requires that nutrient content claims use the terms defined in FDA's regulations, and sections 403(a) and 201(n) of the act, including compliance as appropriate with existing § 101.13 (21 CFR 101.13). If, after this review, FDA has no objections to the claim, then the statute provides that the claim may be used on food labels 120 days after submission of a complete notification.

By contrast, if the statement is not from an appropriate scientific body or is found not to be an "authoritative statement" from a Federal scientific body or NAS (or any of its subdivisions), the agency intends to determine that the notification does not meet the requirements of section 403(r)(3)(C) or (r)(2)(G) of the act in that the submitter has not submitted a statement from a Federal scientific body or NAS, or an authoritative statement from such a body. The agency may notify the submitter of this determination, and its basis, by letter. Alternatively, the agency may issue an interim final rule to prohibit the claim.

Generally, the agency would notify the submitter by letter when, for example, the notification is deficient on its face, and the agency would use the rulemaking process when substantial scientific or legal questions are presented by the notification. The agency intends to elaborate further on these issues in implementing regulations. The agency has chosen to respond with nine interim rules publishing in this issue of the **Federal Register** to a notification for nine claims to specify the approach used by the agency to review this notification in the absence of implementing regulations, and to provide opportunity for public comment. In the future, the agency anticipates that it may respond to similar notifications by letter. Whether FDA sends a letter or acts by rulemaking to prohibit a claim, the agency may begin an enforcement action under the act in a U. S. district court if such a claim is used in food labeling.

The agency notes that, when it sends such a letter or acts by regulation to prohibit the use of a claim, a person nonetheless may submit in the future a notification that bases the claim on a statement that meets the requirements of section 403(r)(3)(C) or (r)(2)(G) of the act. If there is no authoritative statement that may serve as a basis for the claim, an interested person may petition the agency under section 403(r)(4) of the act and § 101.70 to authorize the health claim by regulation under section 403(r)(3)(B) of the act. For a nutrient content claim, an interested person may submit a citizen petition under 21 CFR 10.30 that requests the agency to establish the Daily Value to which the claim would refer.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 2). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of

the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the first claim in the notification. The notification included six statements that the petitioner identified as authoritative statements on which the following claim is based: "Antioxidant vitamins C and E may reduce the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts. Sources of Vitamin C and E include fruits, vegetables, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. FDA notes that this claim describes the relationship between vitamins C and E and a number of different diseases and, thus, in point of fact, reflects several prospective health claims. The second sentence, "Sources of Vitamin C and E include fruits, vegetables, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act.

With respect to nutrient content claims, FDA concluded in comment 152 of its final rule for nutrient content claims (58 FR 2302 at 2345, January 6, 1993) that the term "source" alone merely connotes that a nutrient is present and does not provide consumers with meaningful information about the level of the nutrient. Therefore, FDA did not define the term "source," although it did define several other terms that include the word "source." For example, a food is defined as a "good source" of a nutrient if it contains 10 to 19 percent of the Reference Daily Intake (RDI) for that nutrient per reference amount customarily consumed (§ 101.54(c) (21 CFR 101.54(c))), or as an "excellent source" if it contains 20 percent or more of a nutrient's RDI per reference amount customarily consumed (§ 101.54(b)). In addition, "trivial source" is defined as a synonym for "free" and "low source" as a synonym for "low" (see, for example, 21 CFR 101.61(b)(1) and (b)(4)).

Information regarding the agency's position on nutrient content claims is included in the preamble to the proposed and final rules for nutrient content claims (56 FR 60421, November 27, 1991, and 58 FR 2302, January 6, 1993) and in the agency guidance document, "Food Labeling—Questions and Answers—Volume I—For Guidance to Facilitate the Process of Developing or Revising Labels for Foods Other than Dietary Supplements" (Ref. 3).

As for statements that constitute dietary guidance, such label information must be truthful and not misleading as discussed in section II.D.6 of the preamble to the final rule for general requirements for health claims (58 FR 2478 at 2487, January 6, 1993) and in the agency guidance document, "Food Labeling—Questions and Answers—Volume II—A Guide for Restaurants and Other Retail Establishments" (Ref. 4). The agency notes that in the case of the subject sentence, not all fruits, vegetables, and dietary supplements contain significant amounts of vitamins C and E, and therefore if the statement were intended to reflect dietary guidance it cannot be considered to be truthful and not misleading. In addition, to be truthful and not misleading when used on a particular food's labeling, that food must contain significant amounts of vitamins C and E.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "Antioxidant vitamins C and E may reduce the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts." The agency has determined that none of the six statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the six statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A published article authored by two employees of CDC; (2) public information provided on the Internet by an institute of NIH; (3) an electronic version provided on the Internet of "Nutrition and Your Health: Dietary Guidelines for Americans," (Home and Garden Bulletin No. 232, Fourth Edition, 1995) (hereinafter, referred to as "the dietary guidelines") recommendations developed by a group of Federal agencies and issued jointly by the Department of Health and Human Services (DHHS) and the United States Department of Agriculture (USDA); (4) public information provided on the Internet by CDC's Office of Women's Health; (5) a NIH press release provided on the Internet; and (6) an electronic version provided on the Internet of a quarterly report from USDA's Agricultural Research Service (ARS). Thus, the statements in the notification are attributable to NIH, CDC, and USDA/ARS, as well as a group of Federal agencies that included NIH, CDC, and USDA/ARS. Two of the scientific bodies identified, NIH and CDC, are highlighted in the statute as Federal scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. The group that developed the dietary guidelines included Federal agencies that are such scientific bodies. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the six statements discussed in A. through F. of this section of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Antioxidant micronutrients, especially carotenes, vitamin C, and vitamin E, appear to play many important roles in protecting the body against cancer. They block the formation of chemical carcinogens in the stomach, protect DNA and lipid membranes from oxidative damage, and enhance immune function." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in the conclusion section of an article published in *The Annual Review of Nutrition* (12:139–59:1992), entitled: "Dietary Carotenes, Vitamin C, and Vitamin E as Protective Antioxidants in

Human Cancers," and authored by two persons, T. Byers and G. Perry, who are identified in the article as employees of CDC at the time of publication of the article. *The Annual Review of Nutrition* is published periodically by Annual Reviews, Inc., in Palo Alto, CA. Editors for each volume serve as reviewers for the various articles included in the volume and contributors are asked to submit articles for consideration for publication. The subject article is 20 pages of a review of the literature that includes a section on the theoretical roles of dietary oxidants in cancer prevention and focuses on the outcomes of laboratory animal research and epidemiologic studies conducted since 1987. The subject statement appears in the conclusion section of the paper. The agency notes that the next sentence in the conclusion section states: "Nevertheless, many important questions need to be answered before either micronutrient supplements or food fortification can be recommended as a cancer prevention strategy to the general population."

The noted qualifying sentence, as well as the wording of the statement itself (i.e., "appear to play"), suggests that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of this document.

FDA asked CDC whether the statement is an "authoritative statement" under FDAMA. CDC responded to FDA that the statement is not an authoritative statement of CDC because it does not reflect consensus within CDC and was not published by CDC (Ref. 5). CDC indicated that the article was authored by individual employees made in the individual capacity of those employees. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement was not published by CDC and is instead the statement of individual employees of CDC made in their individual capacities, as discussed in section I.A.2 of this document.

B. Statement 2

Statement 2 reads: "[Antioxidants] may help prevent disease. Antioxidants fight harmful molecules called oxygen free radicals, which are created by the body as cells go about their normal business of producing energy * * * [Some] studies show that antioxidants may help prevent heart disease, some cancers, cataracts, that are more common as people get older." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece entitled "Life Extension: Science or Fiction?" that is provided on the Internet by the Administration on Aging and which includes statements from the "Age Page" of the National Institute on Aging (an Institute of NIH) ("http://www.aoa.dhhs.gov/aoa/pages/agepages/lifextsn.html" accessed on 12/2/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is dated 1994, is approximately two standard printed pages in length, and is described as being intended to inform the reader about chemicals being studied that may play a role in aging and what scientists have learned about them so far. Topics covered include antioxidants, deoxyribonucleic acid (DNA), dehydroepiandrosterone (DHEA), and other hormones. Ten tips for healthy aging are also included. The section on antioxidants is 14 sentences in length and includes the three sentences identified as the subject statement. The agency notes that the last sentence of the antioxidant section is: "More research is needed before specific recommendations can be made."

FDA asked NIH whether the statement is an "authoritative statement" under FDAMA. NIH responded to FDA that the statement is not an authoritative statement of NIH because it was prepared by an individual from the National Institute on Aging and is not based on a deliberative review of the scientific evidence regarding the nutrient-disease relationship in question (Ref. 6). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 of this document.

C. Statement 3

Statement 3 reads: "The antioxidant nutrients found in plant foods (e.g., vitamin C, carotenoids, vitamin E, and certain minerals) are presently of great interest to scientists and the public because of their potentially beneficial role in reducing the risk of cancer and certain other chronic diseases." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is from an electronic version of the dietary guidelines issued jointly by DHHS and USDA and provided on the Internet ("http:www.usda.gov/fcs/library/0102–1.txt" accessed on 12/5/97). The submitted material consists of selected pages reprinted from the Internet information, which identifies the seven dietary guidelines and gives background information on the use of, and reasons for, the guidelines. The dietary guidelines reflect the findings of a panel of scientists concerning the dietary recommendations to be made to the U.S. population, and the guidelines are based on a deliberative review of the scientific evidence about the nutrient/disease relationships that the guidelines address. The subject statement is found within the discussion that accompanies the recommendation to "Choose a diet with plenty of grain products, vegetables, and fruits."

The statement indicates that a relationship between antioxidant nutrients and cancer and other chronic disease is "of great interest" because of a "potentially beneficial role." The statement points to the need for future research and suggests that whether a relationship exists should be the subject of scientific study, but does not indicate that there exists a scientifically sound relationship that should be accorded a presumption of validity. This assessment is further supported by the fact that the subject of the dietary guidelines recommendation that the text is intended to clarify is the dietary importance of grain products, vegetables, and fruits, not the specific impact of antioxidant nutrients, vitamins C and E, per se. FDA notes that, consistent with the dietary guidelines, the agency has authorized a health claim for the relationship between cancer and fruits and vegetables that contain vitamin C (as well as vitamin A (as beta-carotene) and dietary fiber) (21 CFR 101.78).

On this basis, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement indicates that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of this document.

The dietary guidelines is the product of a periodic review by a group of Federal agencies, the most recent review having been completed in 1995. FDA did not attempt to reconvene this group of Federal agencies to consult with it about whether the statement is an authoritative statement because, as discussed previously, the wording and context of the statement show that it is not an authoritative statement under section 403(r)(3)(C) of the act.

D. Statement 4

Statement 4 reads: "A diet high in fiber, high in antioxidants, and low in fat may play an important role in

preventing the development of atherosclerosis, coronary heart disease, and some cancers." The notification identified Statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in information on "Health in Later Years" provided on the Internet by CDC's Office of Women's Health in a section entitled: "Health Problems among Older Women," and is included in the subsection "Improving Health and Quality of Life" ("http://www.cdc.gov/od/owh/whily.htm" accessed on 11/26/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is not dated, is approximately three standard printed pages in length, and covers the topics of coronary heart disease, cancer, stroke, and other diseases.

FDA asked CDC whether this statement is an "authoritative statement" under FDAMA. CDC responded that the statement is not an authoritative statement of CDC because, although it is a statement from CDC, it is not based upon a deliberative review of the scientific evidence regarding the nutrient-disease relationship in question; rather, it is a statement from an educational fact sheet developed by CDC's Office of Women's Health to convey information to the public (Ref. 5). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement is not based on a deliberative review of the scientific evidence.

E. Statement 5

Statement 5 reads: "[It] is likely that certain antioxidants, such as vitamins C and E, may destroy the oxygen radicals, retard molecular damage, and perhaps slow the rate of aging." The notification identified Statement 5 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in an undated press release from the National Institute on Aging at NIH, which was provided on the Internet ("http://www.nih.gov/nia/new/press/agingcau.htm" accessed on 12/1/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) states that it is a synopsis of a recent publication entitled: "Aging—Causes and Defenses," which had been authored by R. Martin, D. Danger, and N. Holbrook and published in *The Annual Review of Medicine* (44:419,429:1993). The press release indicates that it is providing a synopsis of the publication but does not clarify if the authors are associated with, or are staff of, NIH. *The Annual Review of Medicine* is published periodically by Annual Reviews, Inc., in Palo Alto, CA. Editors for each volume serve as reviewers for the various articles included in the volume and contributors are asked to submit articles to be considered for publication.

The statement is not "about the relationship between a nutrient and a disease or health-related condition" because aging, the absence of oxygen radicals, and the presence of molecular damage are not diseases or health-related conditions. FDA has therefore concluded that the statement does not address a disease or health-related condition and therefore, as discussed in section I.A.1 of this document, is not an "authoritative statement" under section 403(r)(3)(C) of the act.

F. Statement 6

Statement 6 reads: "Antioxidants are thought to help prevent heart attack, stroke and cancer." The notification identified Statement 6 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Do carotenoids—the bright red, yellow and orange pigments in fruits and vegetables—warrant a Recommended Dietary Allowance?" The paragraph describes the nature and outcome of two ARS studies and is attributed to Betty J. Burr at the USDA Western Human Nutrition Research Center in San Francisco. The agency notes that the last sentence of the paragraph is: "Further ARS studies will try to shed more light on whether a specific minimum daily intake of carotenoids is important for good health."

The context of the paragraph, as well as the wording of the statement (i.e., "are thought"), suggests that the scientific evidence about the relationship in question is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 7). USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and § 101.70 to authorize the health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of this document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act (21 U.S.C. 343(r)(7)(B)), added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet-disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between antioxidant vitamins C and E and the risk in adults of atherosclerosis, coronary heart disease, certain cancers, and cataracts has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Commission on Dietary Supplement Labels, "Report of the Commission on Dietary Supplement Labels," November 1997, p. vii.

2. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

3. "Food Labeling—Questions and Answers—Volume I—For Guidance to Facilitate the Process of Developing or Revising Labels for Foods Other than Dietary Supplements," August 1993, Questions C1–C54.

4. "Food Labeling—Questions and Answers—Volume II—A Guide for Restaurants and Other Retail Establishments," August 1995, Questions R117–R127.

5. Letter to Christine J. Lewis, CFSAN, FDA, from Dixie E. Snider, CDC, April 21, 1998.

6. Letter to Christine Lewis, CFSAN, FDA, from William R. Harlan, NIH, April 30, 1998.

7. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16454 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0428]

Food Labeling: Health Claims; Antioxidant Vitamin A and Beta-Carotene and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, and Certain Cancers

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this interim final rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS-451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105-115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts" (hereinafter referred to as "Health Claims; Vitamins C and E"), which is published elsewhere in this issue of the **Federal Register**. In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the second claim in the notification. The notification included 11 statements that the petitioner identified as authoritative statements on which the following claim is based: "Antioxidant vitamin A and beta-carotene may reduce the risk in adults of atherosclerosis, coronary heart disease and certain cancers. Sources of Vitamin A and beta-carotene include red, yellow and green leafy vegetables, dairy products, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. FDA notes that this claim describes the relationship between vitamin A and beta-carotene and a number of different diseases and, thus, in point of fact, reflects several prospective health claims. The second sentence, "Sources of Vitamin A and beta-carotene include red, yellow and green leafy vegetables, dairy products, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "Antioxidant vitamin A and beta-carotene may reduce the risk in adults of atherosclerosis, coronary heart disease and certain cancers." The agency has determined that none of the 11 statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows:

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the 11 statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA); (2) an electronic version provided on the Internet of "Nutrition and Your Health: Dietary Guidelines for Americans,"

recommendations developed by a group of Federal agencies and issued jointly by DHHS and USDA; (3) electronic versions provided on the Internet of four quarterly reports from USDA's Agricultural Research Service (ARS) (statement 3, 7, 9, and 11); (4) electronic versions provided on the Internet of two interpretative summaries from USDA/ARS Technology Transfer Information Center (statements 4 and 10); (5) public information provided on the Internet by an institute of the National Institutes of Health (NIH); (6) public information provided on the Internet by USDA/ARS Beltsville Human Nutrition Research Center; and (7) public information provided on the Internet by the National Cancer Institute (NCI), an institute within NIH. Thus, nine statements in the notification are attributable to either NIH or USDA/ARS. A 10th statement is attributable to USDA and DHHS and is intended for use by Federal agencies including NIH, the Centers for Disease Control and Prevention (CDC), and USDA/ARS. An 11th statement from the Dietary Guidelines for Americans is attributable to a group of Federal agencies that included NIH, CDC, and USDA/ARS. Two of the agencies, NIH and CDC, are highlighted in the statute as Federal scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. The agencies that were identified as users of the "Nutrition Monitoring Report" as well as the group that developed the dietary guidelines included Federal agencies that are such scientific bodies, including NIH, CDC, and USDA/ARS. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the 11 statements discussed in sections III.A through III.K of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Beta-carotene and other pro-vitamin a carotenoids can be converted to vitamin A in the body. Interest in the carotenoids has increased in recent years because of the accumulation of a large body of evidence that foods high in carotenoids are protective against a variety of epithelial cancers." The notification identified statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on vitamins that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (SRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The statement indicates that there is interest in the relationship because of a growing body of evidence, but does not confirm that the relationship is considered scientifically valid or well established. Rather, the context suggests that further research would be worthwhile and that the scientific evidence about the relationship is preliminary or inconclusive, as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register.**

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences (NAS). Contractual activities involved in the preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the Government agencies. A disclaimer that appears on the inside front cover of the report, which was not included in the notification, states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register.** The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register,** but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it indicates that the scientific evidence is preliminary or inconclusive, that it does not reflect the official policy of an appropriate scientific body, and that no appropriate scientific body has conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "The antioxidant nutrients found in plant foods (e.g., vitamin C, carotenoids, vitamin E, and certain minerals) are presently of great interest to scientists and the public because of their potentially beneficial role in reducing the risk of cancer and certain other chronic diseases." The notification identified statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is from an electronic version of "Nutrition and Your Health: Dietary Guidelines for Americans" (Home and Garden Bulletin No. 232, Fourth Ed., 1995), hereinafter referred to as the "dietary guidelines," issued jointly by DHHS and USDA and provided on the Internet ("http:www.usda.gov/fcs/library/0102-1.txt" accessed on 12/5/97). The submitted material consists of selected pages reprinted from the Internet information, which identifies the seven dietary guidelines and gives background

information on the use of, and reasons for, the guidelines. The dietary guidelines reflect the findings of a panel of scientists concerning the dietary recommendations to be made to the U.S. population, and the guidelines are based on a deliberative review of the scientific evidence about the nutrient/disease relationships that the guidelines address. The subject statement is found within the discussion that accompanies the recommendation to "Choose a diet with plenty of grain products, vegetables, and fruits."

The statement indicates that a relationship between antioxidant nutrients and cancer and other chronic disease is "of great interest" because of a "potentially beneficial role." The statement points to the need for future research and suggests that whether a relationship exists should be the subject of scientific study, but does not indicate that there exists a scientifically sound relationship that should be accorded a presumption of validity. This assessment is further supported by the fact that the subject of the dietary guideline is the dietary importance of grain products, vegetables, and fruits, not the specific impact of antioxidant nutrients, vitamin A and beta-carotene, per se. FDA notes that, consistent with the dietary guidelines, the agency has authorized a health claim for the relationship between cancer and fruits and vegetables that contain vitamins A (as beta-carotene) as well as vitamin C and dietary fiber (21 CFR 101.78).

On this basis, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because the statement indicates that the scientific evidence about the relationship in question is preliminary or inconclusive, as discussed in section I.A.3 of the **Federal Register** "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

The dietary guidelines is the product of a periodic review by a group of Federal agencies, the most recent review having been completed in 1995. FDA did not attempt to reconvene this group of Federal agencies to consult with it about whether the statement is an authoritative statement because, as discussed previously, the wording and context of the statement show that it is not an authoritative statement under section 403(r)(3)(C) of the act.

C. Statement 3

Statement 3 reads: "If the findings hold up in further research, eating more vegetables rich in beta-carotene and related carotenoids–lutein and lycopene–may help people ward off a cold or flu as well as protect from cancer * * *. The findings also suggest that carotenoid-rich vegetables also stimulate the immune system." The notification identified statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Daily servings of dark green and deep yellow vegetables and tomatoes boost immune response, a preliminary study suggests." The paragraph describes the nature and outcome of one ARS study and is attributed to Tim R. Kramer and Beverly Clevidence of the USDA Beltsville Human Nutrition Research Center in Beltsville, MD. The agency notes that the research is identified as a "preliminary study."

The context of the paragraph, as well as the wording of the statement (i.e., "if the findings hold up"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

D. Statement 4

Statement 4 reads: "This research involving cells provides data which supports the general hypothesis that beta-carotene and lutein protect cells by serving as antioxidants." The notification identified statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a one paragraph interpretative summary of a research report from Technology Transfer Information Center, TEKTRAN of USDA/ARS entitled "Beta-carotene and Lutein Protect the Plasma Membrane of HEPG2 Human Liver Cells Against Oxidant-induced Damage," and provided on the Internet ("http://www.nalusda.gov/ttic/tektran/data/000006/92/0000069264.html" accessed on 12/3/97) (ARS Report Number 69264). It describes the nature and outcome of one study, which is attributed to Keith J. Martin, Mark L. Failla, and James C. Smith, Jr.

The statement is not "about the relationship between a nutrient and a disease or health-related condition" because no disease is identified in the statement. Therefore, FDA has concluded that the statement does not address a disease or health-related condition and therefore is not an "authoritative statement" under section 403(r)(C)(3) of the act, as described in section I.A.1 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

E. Statement 5

Statement 5 reads: "[Antioxidants] may help prevent disease. Antioxidants fight harmful molecules called oxygen free radicals, which are created by the body as cells go about their normal business of producing energy * * *. [S]ome studies show that antioxidants may help prevent heart disease, some cancers, cataracts, and other health problems that are more common as people get older." The notification identified statement 5 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece entitled: "Life Extension: Science or Fiction?" that is provided on the Internet by the Administration on Aging and which includes statements from the "Age Page" of the National Institute on Aging (an Institute of the NIH) ("http://www.aoa.dhhs.gov/aoa/pages/agepages/lifextsn.html" accessed on 12/2/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is dated 1994, is approximately two standard printed pages in length, and is described as being intended to inform the reader about chemicals being studied that may play a role in aging and what scientists have learned about them so far. Topics

covered include: Antioxidants, DNA, DHEA, and other hormones. Ten tips for healthy aging are also included. The section on antioxidants is 14 sentences in length and includes the 3 sentences identified as the subject statement. The agency notes that the last sentence of the antioxidant section is: "More research is needed before specific recommendations can be made."

FDA asked NIH whether the statement is an "authoritative statement" under FDAMA. NIH responded to FDA that the statement is not an authoritative statement of NIH because it was prepared by an individual from the National Institute on Aging and is not based on a deliberative review of scientific evidence regarding the nutrient-disease relationship in question (Ref. 4). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

F. Statement 6

Statement 6 reads: "As potent antioxidants, [lutein and lycopene] are thought to contribute to the lower rates of heart disease, cancer and other diseases of aging among populations that eat a lot of fruits and vegetables." The notification identified statement 6 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found within an information piece, "BHNRC Success Stories," provided on the Internet by USDA/ARS Beltsville Human Nutrition Research Center and entitled: "Carotenoids Show Their Real Colors" ("http://www.barc.usda.gov/bhnrc/success.htm" accessed on 12/4/97). This electronically available information (submitted to the agency as a hardcopy reprint from the Internet information) is undated. The section on carotenoids is three brief paragraphs in length and describes the nature and outcome of a single ARS study attributed to Tim Kramer and Beverly Clevidence. The same study was also referenced in ARS's *Human Nutrition* quarterly report as noted in the discussion of statement 3 in section III.C of this document.

The context of the section, as well as the wording of the statement (i.e., "are thought"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that the ARS "BHNRC Success Stories" describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

G. Statement 7

Statement 7 reads: "Researchers also found more evidence suggesting that carotenes act as antioxidants to protect the body from harmful oxidation. Antioxidants are thought to help prevent heart attack, stroke and cancer. During the low-carotene stints, researchers recorded several biochemical signs of oxidative damage." The notification identified statement 7 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Do carotenoids—the bright red, yellow and orange pigments in fruits and vegetables—warrant a Recommended Dietary Allowance?" The paragraph describes the nature and outcome of two ARS studies and is attributed to Betty Burri of the Western Human Nutrition Research Center in San Francisco, CA. The agency notes that the final sentence states: "Further ARS studies will try to shed more light on whether a specific minimum daily intake of carotenoids is important for good health."

The context of the paragraph, as well as the wording of the statement (i.e., "are thought"), suggests that the statement is based on preliminary research and that further study is needed. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

H. Statement 8

Statement 8 reads: "[H]igh dietary carotene and possibly vitamins C and E and folate are associated with reduced risk for cervical cancer." The notification identified statement 8 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in information provided on the Internet by the NCI, an institute of NIH, in an article entitled: "Prevention of Cervical Cancer" and disseminated as part of "PDQ—Detection & Prevention—Health Professionals" (PDQ stands for physicians data query) ("http://cancernet.nci.nih.gov/ clinpdq/screening/ Prevention_of_cervical_cancer_Physician.html" accessed on 12/1/97). This electronically available information (submitted as a hardcopy reprint from the Internet information) is undated, approximately nine standard printed pages in length, and is described as intended for use by doctors and other health care professionals. The subject sentence is one of several sentences summarizing research on the intake of micronutrients and the risk of squamous intraepithelial lesion (SIL) and cervical cancer.

FDA asked NIH whether this was an "authoritative statement" under FDAMA. NIH responded that the statement was not an authoritative statement of NIH and does not reflect consensus within NIH (Ref. 4). NIH explained that the evidence was reviewed by an editorial board for PDQ, and the majority of the members are not Federal employees. The statements contained in PDQ were reported by NIH to be "state of the art" educational statements developed by an editorial board that assesses the levels of scientific evidence supporting the statements. In this instance, the scientific evidence for the nutrient-disease relationship was not considered to be strong since it was based on observational studies. NIH reiterated that the statement is not the product of consensus process within the NCI and the statement has not undergone formal review and clearance by the Director of the National Institutes of Health.

Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of

the act because it does not reflect consensus within NIH, as discussed in section I.A.2 of "Health Claims: Vitamin C and E," which is published elsewhere in this issue of the **Federal Register**.

I. Statement 9

Statement 9 reads: "[B]eta carotene or vitamin A supplements have reversed pre-cancerous conditions in people's mouths." The notification identified statement 9 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3rd quarter 1995) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q395/hn395.htm" accessed on 12/3/97) in a description of research entitled: "A daily dose of blue-green algae Spirulina may help prevent cancer of the mouth, a study shows." The paragraph describes the nature and outcome of an ARS study and is attributed to Padmanabhan P. Nair of the Beltsville Human Nutrition Research Center, Beltsville, MD.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

J. Statement 10

Statement 10 reads: "Carotenoids or other plant components appear to boost the immune system." The notification identified statement 10 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a one-paragraph interpretative summary of a research report from Technology Transfer Information Center, TEKTRAN of USDA/ARS entitled: "Consumption of Carotenoid-Rich Vegetables Increases T-Lymphocyte Proliferation and Plasma Levels of Carotenoid Oxidation Products" and provided on the Internet ("http://www.nalusda.gov/ttic/tektran/data/000007/41/0000074185.html" accessed on 12/3/97) (ARS Report Number 74185). It describes the nature and outcome of one study, which is attributed to ten researchers, the first author being Beverly Clevidence.

FDA finds that the statement is not "about the relationship between a nutrient and a disease or health-related condition" because no disease is identified in the statement. Therefore, FDA has concluded that the statement does not address a disease or health-related condition and therefore is not an "authoritative statement" under section 403(r)(C)(3) of the act.

K. Statement 11

Statement 11 reads: "A wealth of epidemiological evidence has linked a high intake of green leafy and deep yellow vegetables—both rich in beta-carotene—with lower rates of many types of cancer * * *. Men over 65 who took a 50-milligram beta-carotene supplement every other day during the 12-year study had natural killer cells that were more active than their counterparts who got a placebo. Natural killer cells—or NK cells—are the immune system's sentinels, ever on watch for viruses and cancer cells." The notification identified statement 11 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th quarter 1996) (see discussion of statement 3 in section III.C of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Older people who get plenty of beta carotene may have a better chance of preventing virus infections or a cancerous growth." The paragraph describes the nature and outcome of a study and is attributed to Simin Nikbin Meydani of the USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(C)(3) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statements published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) and 21 CFR 10.70 to authorize the health claim or claims by regulation under section 403(r)(3)(B).

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of this document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

As described previously in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim

final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim related to the relationship between antioxidant vitamin A and beta-carotene and the risk in adults of atherosclerosis, coronary heart disease, and certain cancers has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this interim final rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P. C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii to vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

4. Letter to Christine Lewis, CFSAN, FDA, from William R. Harlan, NIH, April 30, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16455 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0427]

Food Labeling: Health Claims; B-Complex Vitamins, Lowered Homocysteine Levels, and the Risk in Adults of Cardiovascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the

petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the Federal Register (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the third claim in the notification. The notification included four statements that the submitter identified as authoritative statements on which the following claim is based: "B-complex vitamins-Folic Acid, Vitamin B_6, Vitamin B_{12}—may reduce the risk in adults of cardiovascular disease by lowering elevated serum homocysteine levels, one of the many factors implicated in that disease. Sources of B-complex vitamins include whole and enriched grains, green leafy vegetables, fish, dry beans, red meat, and dietary supplements."

The first sentence of this claim will be discussed in greater detail section III of this document. The second sentence, "Sources of B-complex vitamins include whole and enriched grains, green leafy vegetables, fish, dry beans, red meat, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the Federal Register.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "B-complex vitamins—Folic Acid, Vitamin B_6, Vitamin B_{12}—may reduce the risk in adults of cardiovascular disease by lowering elevated serum homocysteine levels, one of the many factors implicated in that disease." The agency has determined that none of the four statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the four statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites four statements from quarterly reports from the U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) from electronic versions provided on the Internet. Thus, the statements in the notification are all attributable to USDA's ARS. FDA believes that USDA/ARS is a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to an appropriate Federal scientific body or to its employees.

Finally, however, none of the four statements discussed in sections III.A through III.D of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "A research team's new evidence confirms earlier data that elevated levels of the amino acid homocysteine increase the odds for significant narrowing of the arteries * * * The Analysis also Showed that Insufficient Levels of Folate and, to a Lesser Extent, Vitamin B_6 contribute to increased risk of artery narrowing. Like a see-saw, homocysteine levels go up as the vitamins go down, and vice versa." The notification identified Statement 1

as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 1st quarter 1995) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q195/hn195.htm" accessed on 12/4/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Eating green vegetables, citric and other foods rich in folate (folic acid) may help keep the arteries open, reducing heart disease and stroke risks." The paragraph describes the nature and outcome of one ARS study and is attributed to Jacob Selhub and Paul Jaques of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts.

FDA asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that the ARS Quarterly Reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

B. Statement 2

Statement 2 reads: "When people don't have enough of these [vitamin B_{12} and folate] vitamins to metabolize homocysteine it accumulates in the blood and damages the vessels." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th Quarter 1996) (see discussion of statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm accessed" on 12/3/97) in a description of research entitled: "One or two alcoholic drinks a day can interfere with people's B vitamin levels, according to a study of 41 men and women." The paragraph describes the nature and outcome of one ARS study and is attributed to Judith Hallfrisch of the USDA Beltsville Human Nutrition Research Center on Aging.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

C. Statement 3

Statement 3 reads: " [T]he body needs [folate] to convert homocysteine into a nontoxic amino acid and thus prevent damage to blood vessels * * * Supplement users had the lowest homocysteine levels but not much lower than frequent consumers of fruits, vegetables and cereal." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 4th Quarter 1996) (see discussion of statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q496/hn496.htm" accessed on 12/3/97) in a description of research entitled: "Eating more fruits, vegetables, and cold cereal fortified with folic acid—a form of folate—should significantly reduce the risk of heart disease and stroke that comes from having high blood levels of homocysteine, a new study shows." The paragraph describes the nature and outcome of one ARS study and is attributed to Katherine L. Tucker of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

D. Statement 4

Statement 4 reads: "Research has linked high homocysteine levels to increased risk of heart disease and stroke." The notification identified Statement 4 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d Quarter 1995) (see discussion of Statement 1 in section III.A of this document), which is issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q395/hn395.htm" accessed on 12/3/97) in a description of research entitled "Measuring blood levels of the amino acid homocysteine only after an overnight fast could miss nearly half of the people with elevated levels." The paragraph describes the nature and outcome of one ARS study and is attributed to Andrew G. Bostom and Jacob Selhub of the Jean Mayer USDA Human Nutrition Research Center on Aging at Tufts, Boston, MA.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body of the U.S. Government as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the

agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C) of the act.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between B-complex vitamins (folic acid, vitamin B_6, vitamin B_{12}), lowering elevated serum homocysteine levels, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16456 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0423]

Food Labeling: Health Claims; Calcium Consumption by Adolescents and Adults, Bone Density and The Risk of Fractures

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this interim final rule to prohibit the use on foods of a claim relating to the relationship between calcium, bone density, and the risk of fractures. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA is prohibiting the claim because section 303 of FDAMA does not apply when FDA has an existing regulation authorizing a health claim about the relationship between the nutrient and the disease or health-related condition at issue. A health claim concerning the relationship between calcium and osteoporosis is already authorized. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998. Submit written comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document published elsewhere in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the fourth claim in the notification. The notification included five statements that the petitioner identified as authoritative statements on which the following claim is based: "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures. Sources of calcium include dairy products, broccoli, spinach, and dietary supplements."

As discussed in greater detail in section III of this document, FDA has determined that the claim in the first sentence addresses the same relationship as provided for by an existing authorized health claim, specifically § 101.72 (21 CFR 101.72), "Health claims: calcium and osteoporosis." The second sentence, "Sources of calcium include dairy products, broccoli, spinach, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

A. Section 303 of FDAMA as it Relates to Existing Authorized Health Claims

The claim at issue in this rulemaking raises the question of the relationship of the notification process established in section 403(r)(3)(C) of the act to the health claims authorization process provided by section 403(r)(4) and (r)(3)(B). In particular, when FDA has issued a regulation under section 403(r)(3)(B) of the act that authorizes claims that characterize the relationship of a nutrient to a disease or health-related condition, may the notification process of section 403(r)(3)(C) be used to make a health claim about the same relationship, thereby effectively modifying the claims already authorized by regulation?

Section 403(r)(3)(C) of the act, as added by section 303 of FDAMA, provides that a health claim "which is not authorized by the Secretary in a regulation promulgated in accordance with [section 403(r)(3)(B)], shall be authorized and may be made" if the requirements of section 403(r)(3)(C) of the act are met. When discussing the effect of section 303 of FDAMA, the Senate Report states: "Once FDA regulations governing health claims

concerning a particular diet/disease relationship (e.g., calcium and osteoporosis) have become effective, no claim concerning that diet/disease relationship based on the statement of an authoritative scientific body could be made unless it is consistent with the FDA regulation" (S. Rept. 105–43, at 51 (1997)). Therefore, when a claim about the relationship between a nutrient and a disease or health-related condition is authorized by a regulation issued under section 403(r)(3)(B) of the act, section 403(r)(3)(C) does not authorize a claim about that relationship based on an authoritative statement. Accordingly, the authoritative statement notification process for health claims under section 403(r)(3)(C) of the act does not apply when there is an existing regulation issued under section 403(r)(3)(B) of the act that authorizes claims about the relationship between a nutrient and a disease or health-related condition. However, such a health claim can be made without prior notification provided it is consistent with the existing health claim regulation.

Because of the nature of the health claim regulations issued under section 403(r)(3)(B) of the act, a health claim that is "consistent with" such a regulation, whether based on an authoritative statement or not, is authorized by the regulation itself and may be used on an appropriate food or dietary supplement without prior notification to FDA. Manufacturers can make health claims that are consistent with an existing health claim regulation, and use of health claims that are inconsistent with an existing health claim regulation would misbrand the product.

FDA's health claim regulations specify: (1) The relationship between the nutrient and the disease (e.g., calcium and osteoporosis); (2) the significance of the nutrient (e.g., calcium) in reducing the risk of the disease (e.g., osteoporosis); (3) the requirements of the health claim (i.e., information that must be included in the health claim and information that must not be included in the health claim); (4) the nature of foods that are permitted to display the health claim on their labels; and (5) optional information that may be included in the health claim. The regulations specify the elements that a health claim must contain, the elements that it may contain, and the elements that it may not contain; however, they do not specify the exact words to be used in a claim. Accordingly, claims with different wording may be consistent with a health claim regulation provided they meet the requirements of the regulation.

For example, to be consistent with the currently existing regulations relating to calcium intake and reduced risk of osteoporosis, a potential health claim must meet all of the requirements in § 101.72. If a potential claim meets all of the requirements in § 101.72 (i.e., it includes all required information, and it does not include prohibited information), then the health claim is permitted on appropriate foods and dietary supplements as specified in § 101.72(c)(2)(ii), and prior notification about the health claim is not required to use it on an appropriate food or dietary supplement. If the requirements of § 101.72 are not met, the claim would not be consistent with FDA's regulations for calcium and osteoporosis health claims, and such a claim would misbrand any food or dietary supplement on which it appears.

Accordingly, section 303 of FDAMA does not provide for modification of an existing health claim regulation through submission under section 403(r)(3)(C) of the act of a notification for a health claim based on an authoritative statement by a scientific body. A party interested in amending an existing regulation may instead submit a citizen's petition in accordance with the provisions in 21 CFR 10.30.

B. The Prospective Health Claim is a Calcium–Osteoporosis Health Claim that is Not Authorized under Section 403(r)(3)(C) of the Act and is Not Consistent with the Existing Calcium–Osteoporosis Health Claim Authorized by § 101.72

The first sentence in the prospective health claim as submitted in the subject notification, "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures," is a health claim relating to calcium intake and the bone disease, osteoporosis. The reference to the risk of fractures may relate to a number of bone diseases, but a review of the five statements identified in the notification as "authoritative statements" clarifies that the claim refers to the bone disease known as osteoporosis. As specified in § 101.72, the authorized health claim for calcium intake and the risk of osteoporosis is based on the importance of reducing fractures in older persons due to osteoporosis and on the importance of peak bone mass during critical developmental stages, notably adolescence.

Statement 1 in the notification includes three sentences, the first of which reads: "Although the precise relationship of dietary calcium to osteoporosis has not been elucidated, it appears that higher intakes of dietary calcium could increase peak bone mass during adolescence and delay the onset of bone fractures later in life." The other two sentences state: "Inadequate dietary calcium consumption in the first three to four decades of life may be associated with increased risk of osteoporosis in later life," and "[e]vidence shows that chronically low calcium intake especially during adolescence and early adulthood, may compromise development of peak bone mass." These three sentences are excerpted from the Summary and Recommendations section of the 1988 Surgeon General's Report on Nutrition and Health. The Summary and Recommendations section of the report in which these sentences appear makes no mention of any other type of bone disease except osteoporosis. Moreover, FDA notes that it included the recommendations from the report in its own deliberations in authorizing the health claim related to the relationship between calcium and osteoporosis.

Statement 2 is from a Department of Health and Human Services's press release from 1997, and states: "[S]ecretary Shalala noted that there is a 'window of opportunity' during adolescence to increase bone density through calcium intake. Bones grow and incorporate calcium most rapidly during the teen years, and establish approximately 90% of adult mass by age 17." The press release describes an educational program developed by a coalition of government, private sector, and medical groups. As stated in the press release, the education program "is designed to help prevent the next generation from suffering the devastating consequences of osteoporosis by reaching teens with the message of the importance of consuming calcium during the teen years." The context of this statement therefore makes it clear that the statement is about reducing the risk for osteoporosis.

Statement 3 is from a 1997 press release from the National Academy of Sciences, and states: "Calcium recommendations were set at levels associated with maximum retention of body calcium, since bones that are calcium rich are known to be less susceptible to fractures." FDA notes that the sentence that follows this statement reads: "In addition to calcium consumption, other factors that are thought to affect bone retention of calcium and risk of osteoporosis include high rates of growth in children during specific periods, hormonal status, exercise, genetics, and other diet components." The context of this

statement therefore makes it clear that the statement is about risk of fractures due to osteoporosis.

Statement 4 is from a 1997 press release from one of the institutes of the National Institutes of Health, and states: "Supplements of calcium and vitamin D can significantly reduce bone loss and the risk of fractures in older people, according to a new report from scientists at Tufts University." This statement is the first sentence of the press release. The second sentence reads: "The research, the first to show these supplements can help older men fight osteoporosis, also demonstrates that the benefits of these low-cost and easily-available supplements can be maintained over several years." The context of this statement, therefore, makes it clear that the statement is about risk of fractures due to osteoporosis.

Statement 5 is from a 1991 FDA Consumer article, and states: "Both women and men need enough calcium to build peak (maximum) bone mass during their early years of life. Low calcium intake appears to be one important factor in the development of osteoporosis." This statement is also clearly about osteoporosis.

Statements 1 and 5 explicitly refer to osteoporosis. Statements 2, 3, and 4 are adjacent to sentences that explicitly refer to osteoporosis, or, given their context, are about osteoporosis. Given that these statements are about osteoporosis, the agency concludes that this claim characterizes the relationship of calcium to osteoporosis.

Claims characterizing the relationship of calcium to osteoporosis are authorized under § 101.72, which was issued under section 403(r)(3)(B) of the act. As discussed in section III.A of this document, the prospective claim may be used only if it is consistent with the provisions of § 101.72, in which case it can be made on the label or labeling of appropriate foods and dietary supplements.

The prospective health claim, as stated, is not consistent with, and is therefore not authorized under, § 101.72. FDA reviewed the prospective health claim that was submitted with this notification—"Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures"—and determined that at least one key element required by § 101.72 is not included in the claim. The submitted claim mischaracterizes the mechanism by which calcium consumption reduces the risk of osteoporosis. Although calcium consumption increases bone density in adolescents and young adults, in older adults it instead reduces bone loss (see § 101.72(a)). In addition, the term "risk of fractures" is synonymous with neither osteoperosis nor fractures related to osteoperosis. Accordingly, the claim is not authorized by § 101.72.

In summary, FDA is issuing this interim final rule to prohibit use under section 403(r)(3)(C) of the act of the claim, "Calcium consumption by adolescents and adults increases bone density and may decrease the risk of fractures," because it addresses the same nutrient-disease relationship provided for in an existing health claim regulation (§ 101.72), and so its use cannot be authorized under section 403(r)(3)(C) of the act. The claim may be used if it is consistent with § 101.72, the regulation that authorizes use of a calcium-osteoporosis health claim, yet the agency finds that the claim is not consistent with § 101.72. Use of the prospective claim in the labeling of a product would, accordingly, misbrand the product.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in Section III of this document, FDA has determined that the prospective health claim that is the subject of this notification is a health claim about the relationship between calcium and osteoporosis. Because health claims about the relationship between calcium and osteoporosis are already authorized by regulation issued under section 403(r)(3)(B) of the act, FDA has determined that the prospective health claim is not subject to the authoritative statement procedure provided by section 403(r)(3)(C). FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and, accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

A health claim relating to the association between calcium and osteoporosis is authorized under existing regulations. Accordingly, firms can make a claim about calcium and

osteoporosis provided that the food is eligible for the claim and the claim is consistent with the current regulations. The prospective claim relating to the relationship between calcium and bone disease, specifically, increased bone density and the risk of fractures, is not consistent with the existing claim, and would misbrand any food on which it is used. Because firms can highlight the relationship between calcium and osteoporosis, that this prospective claim would misbrand foods does not create any lost opportunities for firms. Therefore, this interim final rule results in neither costs nor benefits.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between calcium and osteoporosis is authorized under existing regulations. This interim final rule results in no regulatory changes for firms, and therefore, this interim final rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16457 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0424]

Food Labeling: Health Claims; Chromium and the Risk in Adults of Hyperglycemia and the Effects of Glucose Intolerance

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D)), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the fifth claim in the notification. The notification included three statements

that the petitioner identified as authoritative statements on which the following claim is based: "In adults, chromium may reduce the risk of hyperglycemia and the effects of glucose intolerance. Sources of chromium include whole grains, brewer's yeast, cheese, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The agency notes that this claim describes the relationship between chromium and two diseases or health-related conditions, and thus reflects two prospective health claims. The second sentence, "Sources of chromium include whole grains, brewer's yeast, cheese, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by section 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, chromium may reduce the risk of hyperglycemia and the effects of glucose intolerance." The agency has determined that none of the three statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the three statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites: (1) Two statements from quarterly reports from the U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) from electronic versions provided on the Internet; and (2) one statement from a report issued by the U.S. Surgeon General. Thus, the statements in the notification are attributable to USDA's ARS or to the Surgeon General. FDA believes that USDA/ARS and the Surgeon General, who is housed within the U.S. Department of Health and Human Services (DHHS), are scientific bodies of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, none of the three statements discussed in sections III.A through C of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Chromium supplements—in two different formulations—lowered blood pressure in rats bred to spontaneously develop hypertension * * * the supplements, chromium picolinate and chromium nicotinate, also reduced the formation of damaging free radicals in the animals' tissues, indicating that chromium can act as an antioxidant * * * chromium is essential for insulin to operate efficiently and has been shown to reduce diabetic symptoms and restore glucose tolerance in studies of humans and animals." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d quarter 1997) issued by USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q397/hn397.htm" accessed on 11/26/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled: "Chromium supplements—in two different formulations—lowered blood pressure in rats bred to spontaneously develop hypertension." The paragraph, which describes the nature and outcome of one ARS study and which refers to previous studies, is attributed to Richard A. Anderson of the Beltsville Human Nutrition Research Center, Beltsville, MD.

The agency notes that the statement focuses first on hypertension in rats, then on the formation of free radicals in rats. The third component of the statement suggests that chromium has an effect in reducing diabetic symptoms and restoration of glucose tolerance in humans as well as animals.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that the ARS Quarterly Reports describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

B. Statement 2

Statement 2 reads: "In a 20-week ARS study, rats that daily consumed more than 2,000 times the estimated safe limit of chromium for people showed no sign of toxicity * * * [the findings] bring into question the relevance of a study done 2 years ago * * * that reported DNA damage."

The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 3d quarter 1997) (see discussion of statement 1 in section III.A of this document), which is issued by USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q397/hn397.htm" accessed on 11/26/97) in a description of research entitled: "There's good news for people concerned about the safety of taking chromium supplements." The paragraph describes the nature and outcome of one ARS study on rats and

is attributed to Richard A. Anderson of the Beltsville Human Nutrition Research Center.

FDA concludes that the statement focuses on levels of intake considered safe in rats and does not identify a relationship between a nutrient and a disease or health-related condition in humans, as described in section I.A.1 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. Thus, this statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not about the relationship between a nutrient and a disease or health-related condition.

C. Statement 3

Statement 3 reads: "Scientists must often draw inferences about the relationships between dietary factors and disease from animal studies or human metabolic and population studies that approach issues indirectly." The notification identified Statement 3 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on the nature of scientific evidence contained in "The Surgeon General's Report on Nutrition and Health—Summary and Recommendations" that was published by the Public Health Service (PHS) of DHHS (1988).

FDA concludes that the statement focuses on a general principle of scientific inference and is not about the relationship between a nutrient and a disease or health-related condition. Thus, this statement is not an "authoritative statement" under section 403(r)(3)(C) of the act.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 10.70 to authorize a health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim related to the association between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612)

requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between chromium and the risk in adults of hyperglycemia and the effects of glucose intolerance has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16458 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0419]

Food Labeling: Health Claims; Omega-3 Fatty Acids and the Risk in Adults of Cardiovascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this interim final rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act (21 U.S.C. 343(r)(2) and (r)(3)) by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts," hereinafter referred to as "Health Claims; Vitamins C and E", which is published elsewhere in this issue of the **Federal Register**. In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the sixth claim in the notification. The notification included two statements that the petitioner identified as authoritative statements on which the following claim is based: "In adults, Omega-3 Fatty Acids may reduce the risk of cardiovascular disease. Sources of Omega-3 Fatty Acids include fish, seafood, flaxseed, soybeans, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The second sentence, "Sources of Omega-3 Fatty Acids include fish, seafood, flaxseed, soybeans, and dietary supplements," is not a health claim. Given that the notification indicated that it was

intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) (21 U.S.C. 321(n)) of the act. These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, Omega-3 Fatty Acids may reduce the risk of cardiovascular disease." The agency has determined that neither of the two statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, each of the two statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites statements from: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA); and (2) a USDA's Agriculture Research Service (ARS) press release provided on the Internet. Thus, one statement in the notification is attributable to USDA and DHHS and is intended for use by Federal agencies including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and USDA/ARS. The second statement is attributable to USDA/ARS. NIH and CDC are highlighted in the statute as scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, neither of the two statements discussed in section III.A and III.B of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Intake of particular polyunsaturated fats, the omega-3 fatty acids, may offer some protection against the development of clinical manifestations of atherosclerosis by decreasing platelet aggregation and clotting activity and preventing arterial thrombosis." The notification identified statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on coronary heart disease that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The wording and context of the statement indicates that arterial thrombosis as affected by omega-3 fatty acids is a preliminary, albeit promising, relationship, and does not yet constitute an established relationship between omega-3 fatty acids and heart disease. As such, the statement appears to indicate that the scientific evidence about the relationship is preliminary or inconclusive as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences. Contractual activities involved in the preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the Government agencies. A disclaimer that appears on the inside front cover of the report, which was not included in the notification, states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**, but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it indicates that the scientific evidence is preliminary or inconclusive, that it does not reflect the official policy

of an appropriate scientific body, and that no appropriate scientific body has conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "In new soybean oil varieties developed by the USDA's Agriculture Research Service palmitic acid is replaced with oleic acid, which has some health benefits. In addition, omega-3 and omega-6 fatty acids, which can actually lower cholesterol levels, are at 7 and 60 percent respectively—essentially the same as regular soybeans." The notification identified statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in a press release from USDA's ARS, dated November 26, 1996, entitled: "New Soybeans Halve Saturated Fat, Keep Nutrition," which was provided on the Internet ("http://www.ars.usda.gov/is/pr/soyfat1196.htm" accessed on 12/4/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) is attributed to Jill Lee of ARS and suggests that Joseph W. Burton (USDA/ARS, Raleigh, NC) or James R. Wilcox (USDA/ARS, West Lafayette, IN) be contacted for details. It is approximately two standard printed pages in length and the subject sentence is one of several sentences that summarize the nutritional differences between two new varieties of soybeans compared with regular soybeans.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 3). USDA explained that informational pieces such as press releases describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include authoritative statements published by any scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 10.70 to authorize a health claim by regulation under section 403(r)(3)(B).

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between omega-3 fatty acids and the risk in adults of

cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between omega-3 fatty acids and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this interim final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii to vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16459 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0422]

Food Labeling: Health Claims; Garlic, Reduction of Serum Cholesterol, and the Risk of Cardiovascular Disease in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed the statement that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statement submitted as the basis of the claim is not an "authoritative statement" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims, and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the seventh claim in the notification. The

notification included one statement that the petitioner identified as an authoritative statement on which the following claim is based: "In adults, garlic may reduce serum cholesterol and the risk of cardiovascular disease." This claim will be discussed in greater detail in section III of this document.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, garlic may reduce serum cholesterol and the risk of cardiovascular disease." The agency has determined that the one statement submitted as a basis for this claim does not meet the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on an authoritative statement, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, the statement cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites a statement from a U.S. Department of Agriculture (USDA) press release provided on the Internet that refers to USDA's Agricultural Research Service (ARS) for further information. Thus, the statement in the notification is attributable to USDA's ARS. FDA believes that USDA/ARS is a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C). Accordingly, the statement provided in the notification in support of the claim may be attributable to an appropriate Federal scientific body or to its employees.

Finally, however, the statement discussed in this section of this document was not found to be an authoritative statement.

Statement

The statement reads: "Garlic is well-known for its medicinal benefits: Lowering blood cholesterol, fighting off infections and boosting the immune system." The notification identified the statement as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is contained in a press release from USDA, dated February 7, 1995, entitled: "Nation's First Garlic from True Seed Produced by USDA Scientist" (Release No. 0102.95), which was provided on the Internet ("http://www.usda.gov/news/releases/1995/02/0102" accessed on 12/16/97). The press release (submitted to the agency as a hardcopy reprint from the Internet) is attributed to Linda Cooke and Maria Bynum (affiliation unknown), but refers editors to Philip W. Simon at ARS for details. The press release summarizes the development of the first garlic seeds and is approximately two standard printed pages in length. The subject sentence is included in a description of garlic and its uses.

The agency asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question (Ref. 2). USDA explained that informational pieces such as press releases describe progress on individual projects without a deliberative review of all relevant scientific evidence. Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence, as discussed in section I.A.3 of "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such a claim, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of the document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statement submitted in support of the prospective health claim does not meet the requirements for an authoritative statement in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit–Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between garlic, decreased serum cholesterol, and the risk in adults of cardiovascular disease has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16460 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0421]

Food Labeling: Health Claims; Zinc and the Body's Ability to Fight Infection and Heal Wounds in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a claim relating to the relationship between zinc and the body's ability to fight infection and heal wounds in adults. This rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed statements that the petitioner submitted in that notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim because the statements submitted as the basis of the claim are not "authoritative statements" of a scientific body, as required by FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA

amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document published elsewhere in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the eighth claim in the notification. The notification included two statements that the petitioner identified as authoritative statements on which the following claim is based: "In adults, zinc may increase the body's ability to fight infection and heal wounds. Sources of zinc include whole grains, fish, seafood, meat, poultry, eggs, legumes, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The agency notes that this claim describes the relationship between zinc and two diseases and, thus, in point of fact, reflects two prospective health claims. The second sentence, "Sources of zinc include whole grains, fish, seafood, meat, poultry, eggs, legumes, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim: "In adults, zinc may increase the body's ability to fight infection and heal wounds." The agency has determined that neither of the two statements submitted as the basis for this claim meets the requirements in section 403(r)(3)(C) of the act to be an "authoritative statement." Because the prospective claim is not based on authoritative statements, it is not appropriate for the claim to appear on food labels and labeling. Consequently, FDA is issuing this interim final rule to prohibit the use of this claim. A discussion of the basis for the agency's action on the notification follows.

First, FDA determined that the components required by section 403(r)(3)(C) of the act were present in the notification submitted to support this claim. Second, FDA determined that, as a threshold matter, the two statements cited in support of the claim may be attributable either to an appropriate Federal scientific body or to an employee or employees of such a body.

The notification in support of the claim that is the subject of this document cites: (1) A report on nutrition monitoring prepared for the Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA), and (2) an electronic version provided on the Internet of a quarterly report from USDA's Agricultural Research Service (ARS). Thus, one statement in the notification is attributable to USDA and DHHS and is intended for use by Federal agencies including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and USDA/ARS. The second statement is attributable to USDA/ARS. NIH and CDC are highlighted in the statute as scientific bodies. FDA believes that USDA/ARS is also a scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition for the purposes of section 403(r)(2)(G) and (r)(3)(C) of the act. Accordingly, the statements provided in the notification in support of the claim may be attributable to appropriate Federal scientific bodies or to their employees.

Finally, however, neither of the two statements discussed in sections III.A and III.B of this document was found to be an authoritative statement.

A. Statement 1

Statement 1 reads: "Zinc is an essential mineral in the diet and is a component of many enzymes. As such, it is involved in many metabolic processes including wound healing, immune function, growth and maintenance of tissues." The notification identified Statement 1 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in a discussion on minerals that is contained in "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring" that was prepared for USDA and the Public Health Service of DHHS by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) (DHHS Publication No. (PHS) 89–1255, September 1989, 71). The notification provided a photocopy of selected pages from the report.

The agency notes that the report was prepared under a DHHS contract by LSRO/FASEB, an organization that is neither a Federal Government agency nor affiliated with the National Academy of Sciences. Contractual activities involved in preparation of the report were overseen by several Federal agencies that participate in the National Nutrition Monitoring System (NNMS). The report provides an independent expert panel's review of the dietary and nutritional status of the U.S. population, as well as the factors that determine status, based on information available through the NNMS; the report is an advisory document for the government agencies. A disclaimer that appears on the inside front cover of the report (which was not included in the

notification) states that, although the report was printed and distributed as part of a series of reports from the NNMS, "the interpretations contained in this report do not necessarily express the views or policies of the U.S. Government and its constituent agencies" (Ref. 2). Additionally, as noted in the foreword of the report (page vii), representatives of participating Federal Government agencies "reviewed final drafts of the report for technical accuracy and satisfaction of the scope of work" (Ref. 2).

Given this disclaimer and the statement from the foreword, the component of the submitter's notification that provided "a concise description of the basis upon which [the submitter] relied for determining that the requirements of [403(r)(3)(C)(i)] have been satisfied" (as required by 403(r)(3)(C)(ii)(I) of the act) needed to address why this statement was in fact an authoritative statement. It did not. The disclaimer indicates that Federal Government agencies cannot be considered to have "published" the report in the sense that it represents official policy of the agencies, as discussed in section I.A.2 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**. The foreword of the report indicates that it may involve a deliberative review of the scientific evidence about the dietary and nutritional status of the U.S. population, but that it does not involve a deliberative review of the scientific evidence about diet/disease relationships. Further, the foreword indicates that the Federal agencies did not themselves conduct a deliberative review of the scientific evidence necessary for the statements in the report to be "authoritative statements," as described in section I.A.3 in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**, but rather only a review for technical accuracy of a final draft of the report itself.

FDA concludes that the statement is not an "authoritative statement" because it does not reflect the official policy of an appropriate scientific body, nor has an appropriate scientific body conducted a deliberative review of the scientific evidence.

B. Statement 2

Statement 2 reads: "Dietary zinc shortages—a bigger problem in developing countries than in the United States—may be linked to depressed growth in children, slower wound-healing and difficult births." The notification identified Statement 2 as an "authoritative statement" for purposes of making the claim that is the subject of this rulemaking. The statement is found in *Human Nutrition* (quarterly reports of selected research projects, 1st quarter 1995) issued by the USDA's ARS and provided on the Internet ("http://www.ars.usda.gov/is/qtr/q195/hn195.htm" accessed on 12/24/97). *Human Nutrition* is a periodic compilation of brief (one paragraph) descriptions of ongoing research being conducted within the various ARS facilities. The subject statement (submitted to the agency as a hardcopy reprint from the Internet) appears in a description of research entitled "Boosting a key amino acid in plants could help people get more zinc in their diets." The paragraph describes the nature and outcome of one ARS study using rats and is attributed to William House and Ross Welch of the United States Plant, Soil and Nutrition Laboratory, Ithaca, NY.

FDA asked USDA whether the statement is an "authoritative statement" under FDAMA. USDA responded to FDA that the statement is not an authoritative statement of USDA because it was not based upon a deliberative review of the scientific evidence regarding a relationship between the nutrient and the disease in question. USDA explained that the ARS quarterly reports describe progress on individual projects without a deliberative review of all relevant scientific evidence (Ref. 3). Therefore, FDA has concluded that the statement is not an "authoritative statement" under section 403(r)(3)(C) of the act because it is not based on a deliberative review of the scientific evidence.

In summary, FDA has concluded that the notification does not include any authoritative statement published by a scientific body as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds is not authorized under section 403(r)(3)(C) of the act and is, therefore, prohibited. The agency notes that, at any future time, a notification may be submitted to the agency that bases such a claim or claims on a statement that meets the requirements of section 403(r)(3)(C) of the act. If there is no authoritative statement that may serve as a basis for such claims, an interested person may petition the agency under section 403(r)(4) of the act and 21 CFR 101.70 to authorize a health claim or claims by regulation under section 403(r)(3)(B) of the act.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section of the document, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the statements submitted in support of the prospective health claim do not meet the requirements for authoritative statements in section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(3)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

If in the future FDA authorizes health claims relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds after finding that there is significant scientific agreement about these relationships, the cost to consumers of prohibiting this claim at this time would be the cost of having kept, in the interim, information from appearing in food labeling that would ultimately be shown to be scientifically valid, truthful, and not misleading. At this time, the benefit to consumers of prohibiting this claim is that a claim that has not been shown to be scientifically valid will not appear in food labeling. Accordingly, consumers will be able generally to have confidence when they read food labeling that any diet/disease relationship information in that labeling has been shown to be scientifically valid.

A health claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore no costs to firms are attributable to this interim final rule.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim relating to the relationship between zinc and, in adults, the body's ability to fight infection and heal wounds has not been authorized under existing regulations. The prohibition of this claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

2. LSRO, FASEB, "Nutrition Monitoring in the United States—An Update Report on Nutrition Monitoring," prepared for USDA and DHHS, DHHS Pub. No. (PHS) 89–1255, PHS, DHHS, U.S. Government Printing Office, Washington, DC, inside front cover and pp. iii–vii, September, 1989.

3. Letter to Christine Lewis, CFSAN, FDA, from Eileen Kennedy, USDA, May 7, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16461 Filed 6–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0420]

Food Labeling: Health Claims; Vitamin K and Promotion of Proper Blood Clotting and Improvement in Bone Health in Adults

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to prohibit the use on foods of a health claim relating to relationships between vitamin K and the promotion of proper blood clotting and improvement in bone health in adults. This interim final rule is in response to a notification of a health claim submitted under section 303 of the FDA Modernization Act of 1997 (FDAMA). FDA has reviewed the notification, and, in conformity with the requirements of FDAMA, the agency is prohibiting the claim as a health claim because the claim does not characterize the relationship of the nutrient vitamin K to a disease or health-related condition, as required by section 303 of FDAMA; therefore, section 303 of FDAMA does not authorize use of this claim as a health claim. Although the claim is not a health claim, it may be the type of claim permissible as a structure/function claim. As provided for in section 301 of FDAMA, this rule is effective immediately upon publication.

DATES: The interim final rule is effective June 22, 1998; comments by September 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(3) and (r)(2) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), which provide for the use in food labeling of nutrient content claims and health claims, respectively, based on authoritative statements. FDAMA requires that a notification of the prospective nutrient content claim or the prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce. FDAMA and its requirements are discussed in more detail in a companion document in this issue of the **Federal Register** (see "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risks in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts;" hereinafter referred to as "Health Claims; Vitamins C and E"). In particular, aspects of the requirements for an "authoritative statement" that are relevant to this rulemaking and FDA's review process for notifications are discussed in sections I.A and I.B, respectively, of that document.

Provided certain conditions are met, section 403(r)(3)(C) of the act authorizes the use of claims "of the type described in subparagraph (1)(B)." Section 403(r)(1)(B) of the act describes claims that "characterize[ ] the relationship of a[ ] nutrient * * * to a disease or health-related condition." Accordingly, for a claim to be authorized as a health claim under section 403(r)(3)(C) of the act, it must characterize the relationship of a nutrient to a disease or health-related condition.

II. The Notification

Section 403(r)(2)(G) and (r)(3)(C) of the act became effective on February 19, 1998. On February 23, 1998, the agency received a notification from Weider Nutrition International, Inc., containing nine prospective claims that were identified in the text of the notification as health claims (Ref. 1). The notification included statements that the submitter described as authoritative statements and a scientific literature review for each claim. FDA has created nine separate dockets, one for each of the nine claims and is issuing a separate interim final rule responding to each claim.

This interim final rule addresses the ninth claim in the notification. The notification included one statement that the petitioner identified as an authoritative statement on which the following claim is based: "In adults, vitamin K promotes proper blood clotting and may improve bone health. Sources of Vitamin K include spinach, cabbage, turnip greens, broccoli, tomatoes, and dietary supplements."

The first sentence of this claim will be discussed in greater detail in section III of this document. The second sentence, "Sources of Vitamin K include spinach, cabbage, turnip greens, broccoli, tomatoes, and dietary supplements," is not a health claim. Given that the notification indicated that it was intended to be a notification for health claims, this statement was not reviewed by FDA. The submitter did not separately identify this statement as any particular type of claim.

Nonetheless, as a point of information, the agency wishes to highlight that statements that appropriately constitute nutrient content claims are allowed on labels and in the labeling of foods and dietary supplements. Moreover, statements that constitute dietary guidance are also allowed provided the information is truthful and not misleading as required by sections 403(a) and 201(n) of the act (21 U.S.C. 321(n)). These aspects of nutrient content claims and dietary guidance are discussed in more detail in "Health Claims; Vitamins C and E," which is published elsewhere in this issue of the **Federal Register**.

III. Basis for the Action

FDA has reviewed the notification submitted in support of the prospective claim. In adults, vitamin K promotes proper blood clotting and may improve bone health. In considering this claim, FDA notes that blood clotting does not constitute a disease or health-related condition. Proper blood clotting is a normal, physiological function and vitamin K has a well-established role in this function. Bone health, likewise, does not itself identify a disease or health-related condition. The formation of healthy bones is a normal developmental process to which a number of nutrients contribute. As such, the claim characterizes a relationship of the nutrient to normal body process and not a relationship of the nutrient to a disease or health-related condition, as required by section 403(r)(3)(C) of the act. Accordingly, the subject claim about a relationship between vitamin K and the promotion of proper blood clotting and improvement in bone health is not authorized as a health claim under section 403(r)(3)(C) of the act and is, therefore, prohibited as a health claim.

However, the claim submitted, if truthful and not misleading and depending upon the context, may be of the type known as a structure/function claim and thus eligible to appear on the label or in labeling of products under the exception for such claims for foods in section 201(g)(1)(C) of the act or on dietary supplements under section 403(r)(6) of the act. The agency notes that the phrase "may improve bone health," if used in a labeling context that suggests disease or abnormality of the bone, would constitute an implied health claim and it would cease to be a permissible structure/function claim in that context.

IV. Issuance of an Interim Final Rule, Immediate Effective Date, and Opportunity for Public Comment

For the reasons described in this section, FDA is issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. New section 403(r)(7)(B) of the act, added by section 301 of FDAMA, provides that FDA "may make proposed regulations issued under [section 403(r)] effective upon publication pending consideration of public comment and publication of a final regulation" if the agency "determines that such action is necessary * * * to enable [FDA] to act promptly to ban or modify a claim" under section 403(r) of the act. For purposes of judicial review, "[s]uch proposed regulations shall be deemed final agency action." The legislative history indicates that the agency should issue rules under this authority as interim final rules (H. Conf. Rept. 105–399, at 98 (1997)).

As described in section III of this document, FDA has determined that the claim is not a health claim and therefore is not authorized by section 403(r)(3)(C) of the act. FDA has determined that it is necessary to act promptly to prohibit the claim's use under section 403(r)(3)(C) of the act, and accordingly, is issuing this interim final rule to ban its use under section 403(r)(C).

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments regarding this interim final rule. Comments must be received

by that date. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Economic Impacts

A. Benefit–Cost Analysis

FDA has examined the impacts of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this interim final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this interim final rule is not a major rule for the purpose of congressional review.

Prohibiting a health claim about the association between vitamin K and blood clotting and bone health will not result in any regulatory changes for firms and thus, will not result in any costs to firms. Because the proposed claim may be permissible as a structure/function claim as discussed in section III of this document, firms may still be able to communicate the same or similar information to consumers. This prohibition will not result in either costs or benefits.

B. Small Entity Analysis

FDA has examined the impacts of this interim final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this interim final rule will not have a significant impact on a substantial number of small entities.

A health claim related to the association between vitamin K and the promotion of proper blood clotting and improvement in bone health has not been authorized under existing regulations. The prohibition of this claim as a health claim in this interim final rule results in no regulatory changes for firms, and therefore this rule will not result in a significant increase in costs to any small entity. Therefore, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this interim final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This interim final rule does not trigger the requirement for a written statement under section 202(a) of UMRA because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VII. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VIII. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

Dated: June 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–16462 Filed 6–19–98; 8:45 am]

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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 JUNE 22, 1998

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton research and promotion order:
- Imported cotton and cotton content of imported products; supplemental assessment calculation; published 5-21-98

Hazelnuts grown in—
- Oregon and Washington; published 5-21-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Summer flounder, scup and black sea bass; published 5-21-98
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Federal Acquisition Regulation (FAR):
- Individuals with disabilities; employment and advancement; published 6-22-98
- No-cost value engineering change proposals; published 6-22-98
- Technical amendments; published 6-22-98

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Air quality planning purposes; designation of areas:
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FEDERAL COMMUNICATIONS COMMISSION

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- Technical amendments; published 6-22-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Food labeling—
  - Antioxidant vitamin A and beta-carotene and risk in adults of atherosclerosis, coronary heart disease, and certain cancers; health claims; published 6-22-98
  - Antioxidant vitamins C and E and risk in adults of atherosclerosis, coronary heart disease, cancers, and cataracts; health claims; published 6-22-98
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  - Garlic, serum cholesterol reduction, and risk of cardiovascular disease in adults; health claims; published 6-22-98
  - Omega-3 fatty acids and risk in adults of cardiovascular disease; health claims; published 6-22-98
  - Vitamin K and promotion of proper blood clotting and improvement in bone health in adults; health claims; published 6-22-98
  - Zinc and body's ability to fight infection and heal wounds in adults; health claims; published 6-22-98

Human drugs:
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- Individuals with disabilities; employment and advancement; published 6-22-98
- No-cost value engineering change proposals; published 6-22-98
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PANAMA CANAL COMMISSION

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- Supervising Inspector; references deleted; correction; published 6-22-98

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Supplemental security income:
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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. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building". (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

S. 1605/P.L. 105–181

Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

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