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Monday
July 12, 1999

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Presidential Documents

Title 3—

The President

Memorandum of July 7, 1999

Action Under Section 203 of the Trade Act of 1974 Concerning Lamb Meat

Memorandum for the Secretary of the Treasury, the Secretary of Agriculture, the United States Trade Representative, the Director of the Office of Management and Budget, [and] the Director of the National Economic Council

On April 5, 1999, the United States International Trade Commission (USITC) submitted a report to me that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974, as amended (the ''Trade Act''), that imports of lamb meat are being imported into the United States in such increased quantities as to be a substantial cause of threat of serious injury to the domestic lamb meat industry; and (2) negative findings made pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') with respect to imports of lamb meat from Canada and Mexico.

After considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act, I have implemented actions of a type described in section 203(a)(3). I have determined that the most appropriate action is a tariff-rate quota on imports of lamb meat with an increase in currently scheduled rates of duties for imports within and above the tariff-rate quota level. I have proclaimed such action for a period of 3 years and 1 day in order to facilitate efforts by the domestic industry to make a positive adjustment to import competition.

Specifically, I have established a tariff-rate quota for lamb meat in an amount equal to 31,851,151 kg. in the first year (July 22, 1999, through July 21, 2000), an amount that is equal to imports of lamb meat during calendar year 1998. The tariff-rate quota amount will increase by 857,342 kg. annually in the second and third years of relief. I have also established individual country allocations for product imported from Australia, New Zealand, and an ''other country'' category within the tariff-rate quota, which reflect the actual shares of each country in calendar year 1998. I have established increased rates of duty for imports within the tariff-rate quota amount: namely 9 percent *ad valorem* for imports in the first year of relief; 6 percent *ad valorem* for imports in the second year; and 3 percent *ad valorem* for imports in the third year. I have established increased rates of duty for imports above the tariff-rate quota levels: namely, 40 percent *ad valorem* in the first year of relief, 32 percent *ad valorem* in the second year, and 24 percent *ad valorem* in the third year.

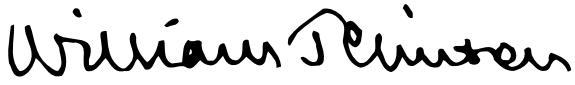
I have also determined that implementation of adjustment assistance measures based on authorized programs of the Department of Agriculture will facilitate efforts by the domestic lamb meat industry to make a positive adjustment to import competition. In this regard, I instruct the United States Trade Representative (the USTR), the Secretary of Agriculture (the Secretary), the Director of the Office of Management and Budget, and the Director of the National Economic Council, in consultation with the U.S. industry, to transmit to me a set of substantial adjustment assistance measures that would improve the competitiveness of the U.S. industry and facilitate efforts by the industry to adjust to import competition.

I further determine, pursuant to section 312(a) of the NAFTA Implementation Act, that imports of lamb meat produced in Canada and Mexico do not account for a substantial share of total imports of lamb meat and are not contributing importantly to the threat of serious injury. Therefore, pursuant to section 312(b) of the NAFTA Implementation Act, the safeguard measure will not apply to imports of lamb meat, whether fresh/chilled or frozen, that are the product of Canada or Mexico. Similarly, the safeguard measure will not apply to imports of lamb meat that are the product of Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act, or other developing countries that have accounted for a minor share of lamb meat imports.

I have determined that the actions described above will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. These actions will provide the domestic industry with necessary temporary relief from increasing import competition as well as assistance from existing U.S. Government programs, while also assuring our trading partners continued access to the United States market. The over-quota tariff rates I have established will provide substantial certainty to the domestic lamb industry regarding import levels.

Pursuant to section 204 of the Trade Act, the USITC will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms to make a positive adjustment to import competition. The USITC will provide to me and to the Congress a report on the results of its monitoring no later than the date that is the mid-point of the period during which the action I have taken under section 203 of the Trade Act is in effect. In this regard, I instruct the USTR, in consultation with the Secretary, and the Director of the Office of Management and Budget to transmit to the USITC no later than 30 days from today a list of benchmarks that the USTR recommends that the USITC use in connection with its monitoring and in preparing its report. These benchmarks are to be focused on industry efforts to adjust to import competition and on price trends for domestic and imported lamb meat.

The United States Trade Representative is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE
Washington, July 7, 1999.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 52

[Docket No. 98–123–4]

RIN 0579–AB10

Pseudorabies in Swine; Extension of Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of indemnity program.

SUMMARY: In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of January 12, 1999, we established animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. In that interim rule, we announced that the indemnity program would end no later than 6 months after publication of the interim rule. We are giving notice that we are extending the indemnity program to continue until further notice.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service's regulations in 9 CFR part 52 govern the payment of indemnity to owners of herds of swine that are slaughtered because they are infected with pseudorabies. Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujesky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is known to cause reproductive problems, including abortion and stillborn death in neonatal pigs, and, occasionally, death in breeding and finishing hogs.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. Industry/State/Federal pseudorabies eradication efforts have been markedly successful. In 1992, for instance, approximately 8,000 herds of swine nationwide were known to be infected with the disease. At the end of 1998, approximately 1,000 herds were known to be infected. This represented slightly less than 1 percent of the herds of swine in the United States. The goal of the cooperative pseudorabies eradication program is the elimination of pseudorabies in the United States in the year 2000.

However, in the past year, market conditions in the swine industry jeopardized the progress of the pseudorabies eradication program. Depressed market conditions caused some producers to eliminate the costs they had been incurring to participate in the eradication program. Continued cessation of eradication efforts, particularly the elimination of herd vaccination, would likely have resulted in an increase in the number of herds infected with pseudorabies. This growth in pseudorabies-infected herds would likely have extended the amount of time necessary to eradicate pseudorabies, and would ultimately have cost both the industry and the Federal and State governments additional time and monies in eradication efforts.

In response to this threat to the progress of the pseudorabies eradication program, we published an interim rule in the **Federal Register** (64 FR 2545–2550, Docket No. 98–123–2) on January 15, 1999 to establish an accelerated pseudorabies eradication program. In order to carry out the accelerated pseudorabies eradication program, the Secretary of Agriculture authorized the transfer of $80 million in funds from the Commodity Credit Corporation.

Under the accelerated program, we began payment of fair market value to owners who depopulated infected herds. In addition to indemnity for the value of the animals, we have been providing funding for trucking costs to disposal, for euthanasia and disposal costs, and for cleaning and disinfection of conveyances used for transporting the swine to disposal.

In our January 15, 1999, interim rule, we stated that the indemnity program would extend 6 months from the date of publication of the interim rule (until July 15, 1999), or until funds allocated for the program were depleted, whichever came first. Based on the time we estimated to be necessary to depopulate all known infected herds should all owners take part, we projected that 6 months would be long enough to complete the program, but short enough to encourage rapid depopulation of infected herds.

To date, the accelerated pseudorabies eradication program has significantly reduced the number of known infected herds in the United States. (As of late-June of this year, 424 infected herds had been depopulated.) All States have eliminated or virtually eliminated their pseudorabies-infected herds, except for Indiana, Iowa, and Minnesota, which are still in the midst of substantial eradication programs. Because some States are still conducting their eradication programs, we consider it important to the pseudorabies eradication effort in the United States to continue our accelerated pseudorabies eradication program beyond July 15, 1999. Therefore, we will continue the accelerated eradication program until further notice.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 6th day of July 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–17612 Filed 7–9–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy

ACTION: Interim final rule; amendment.

SUMMARY: The Department of Energy (DOE) amends its DOE contractor employee protection program regulations to include three provisions inadvertently omitted in an interim final rule published on March 15, 1999.

DATES: This interim final rule is effective August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585–0107; telephone: 202–426–1449; e-mail: *roger.klurfeld@hq.doe.gov*, *thomas.mann@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1999, DOE published an interim final rule in the **Federal Register** (64 FR 12862) that comprehensively revised the regulations for the DOE contractor employee protection program, which are codified at 10 CFR Part 708. DOE became aware during the comment period on the interim final rule that three provisions in the original Part 708 had been inadvertently omitted from the interim final rule. These provisions (10 CFR 708.13, 708.14, and 708.15) were not within the scope of the Notice of Proposed Rulemaking published on January 5, 1998. See 63 FR 374, 375 (statement that those provisions would not be affected by the rulemaking). This interim final rule amendment restores these provisions. It also renumbers them and makes non-substantive language changes to conform the provisions to the ''plain language'' format used in the interim final rule published on March 15, 1999. In addition, § 708.42 (formerly § 708.15) permits the Secretary of Energy or Secretary's designee, to extend any deadlines established by Part 708, and permits the Director of the Office of Hearings and Appeals (OHA Director) to approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

II. Public Comment

DOE ordinarily invites public participation in rulemaking through submission of written comments and attendance at a public hearing. However, DOE has concluded that an opportunity for public comment on this interim final rule is unnecessary and would not be in the public interest. DOE received no public comment on the statement in the January 5, 1998, NOPR announcing that no changes were proposed for the three provisions that are the subject of this rulemaking. Except for one change, this rule corrects the inadvertent omission of the provisions in the program regulations published on March 15, 1999. The new feature added by this rule is the grant of authority to the OHA Director to extend any deadlines applicable to the investigation, hearing and OHA appeal process. This change is procedural and, thus, exempt from notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)). In any event, the change expands the procedural opportunities available to affected parties. Because the rule does not adversely affect the rights of members of the public, no purpose would be served by a public comment opportunity.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect , if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As discussed in the Public Comment section of this notice, neither the Administrative Procedure Act (5 U.S.C. 553) nor any other law requires DOE to propose this rule for public comment. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

D. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and, therefore, is covered under the Categorical Exclusion in paragraph A6

to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612, ''Federalism'' (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. If there are substantial effects, the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing the policy action. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined there are no federalism implications that would warrant the preparation of a federalism assessment. Today's interim final rule deals with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors. This rule will not have a substantial direct effect on states, the relationship between the states and federal government, or the distribution of power and responsibilities among various levels of government.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This interim final rule does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

Issued in Washington, on July 6, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Chapter III of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 708—[AMENDED]

1. The authority citation for Part 708 continues to read as follows:

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i) and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

2. Part 708 is amended by adding § 708.40 to subpart C to read as follows:

§ 708.40 Are contractors required to inform their employees about this program?

Yes. Contractors who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name and address of the DOE office where you can file a complaint under this part.

3. Part 708 is amended by adding § 708.41 to subpart C to read as follows:

§ 708.41 Will DOE ever refer a complaint filed under this part to another agency for investigation and a decision?

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

4. Part 708 is amended by adding § 708.42 to subpart C to read as follows:

§ 708.42 May the deadlines established by this part be extended by any DOE official?

Yes. The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process).

[FR Doc. 99–17658 Filed 7–9–99; 8:45 am]

BILLING CODE 6415–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1999–10]

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has adopted new regulations that address the treatment of limited liability companies (''LLC'') for purposes of the Federal Election Campaign Act (''FECA'' or the ''Act''). The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is publishing today new regulations at 11 CFR 110.1(g) governing the treatment of Limited Liability Companies under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* LLCs are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. These entities did not exist when the FECA was originally enacted in 1971, and were in their infancy when the pertinent provisions of the FECA were last amended in 1979.

On December 18, 1998, the Commission published a Notice of Proposed rulemaking (''NPRM'') in which it sought comments on this issue. 63 FR 70065 (Dec. 18, 1998). Written comments were received from the American Medical Association, the Internal Revenue Service, and Nicholas G. Karambelas.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the FECA controls the legislative review process. *See* 5 U.S.C. 801(a)(4), Small Business Enforcement Fairness Act, Pubic Law 104–121, section 251, 110 Stat. 857, 869 (1996). Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by

the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on Friday, June 25, 1999.

Explanation and Justification

The Federal Election Campaign Act, as amended, contains various restrictions and prohibitions on the right of ''persons'' to contribute to Federal campaigns. The Act defines ''person'' to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. 431(11).

The Act prohibits corporations and labor organizations from making any contribution or expenditure in connection with a Federal election, 2 U.S.C. 441b(a), although these entities may establish separate segregated funds (''SSF'') and solicit contributions from their restricted class to the SSF. 2 U.S.C. 441b(b)(2)(C). The Act also prohibits contributions by Federal contractors, 2 U.S.C. 441c, and foreign nationals, 2 U.S.C. 441e. Contributions by persons whose contributions are not prohibited by the Act are subject to the limits set out in 2 U.S.C. 441a(a), generally $1,000 per candidate per election to Federal office; $20,000 aggregate in any calendar year to national party committees; and $5,000 aggregate in any calendar year to other political committees. 2 U.S.C. 441a(a)(1). Individual contributions may not aggregate more than $25,000 in any calendar year. 2 U.S.C. 441a(a)(3).

Contributions by partnerships are permitted, subject to the 2 U.S.C. 441a(a) limits. In addition, partnership contributions are attributed proportionately against each contributing partner's limit for the same candidate and election. 11 CFR 110.1(e).

In recent years the Commission received several advisory opinion requests (''AOR'') seeking guidance on the treatment of LLCs for purposes of the Act, and has issued advisory opinions (''AO'') in response to these AORs. *See* AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11. The AOs generally considered how the LLCs were treated under State law to determine their treatment for purposes of the Act. As the number of AORs on this topic increased, the Commission decided that it would be advisable to draft a generally-applicable rule to deal with these entities.

The NPRM sought comments on two alternative approaches. Under Alternative A, LLCs would be treated as partnerships for FECA purposes. Contributions by an LLC would be attributed to the LLC and to each member of the LLC in direct proportion to member's share of the LLCs profits, as reported to the recipient by the LLC, or by agreement of the members, as long as certain conditions were met.

Under Alternative B, the Commission would defer to the IRS ''check the box'' rules in classifying LLCs as either partnerships or corporations for FECA purposes. The IRS rules allow certain business entities to opt for corporate tax treatment under federal law without regard to their State law status. *See,* 26 CFR 301.7701–3. Generally, an eligible entity is one that is not required to be treated as a corporation for federal tax purposes. Under 26 U.S.C. 7704, read in conjunction with 26 CFR 301.7701–3, the IRS considers LLCs eligible entities so long as the LLC is not publicly traded. If an eligible LLC makes no election under these rules, the IRS' ''default rule'' treats the LLC as a partnership. 26 CFR 301.7701–3(b). Alternatively, if an LLC selects corporate tax status by ''checking the box,'' it is taxed as a corporation for federal tax purposes. 26 CFR 301.7701–3(b)(3).

Like the IRS rules, the Commission would treat all LLCs as partnerships unless an LLC opts for federal corporate tax treatment pursuant to the ''check the box'' provisions. Both LLCs which ''check the corporate box'' and those that are publicly traded would be treated as corporations for FECA purposes.

For the reasons set forth below, the Commission is adopting Alternative B and will follow the IRS' ''check the box'' approach for purposes of these rules. The new rules therefore supersede AOs 1998–15, 1998–11, 1997–17, 1997–4, 1996–13, and 1995–11, in which the Commission determined that LLCs should be treated as ''persons'' for FECA purposes.

The Commission notes that these rules should be viewed as a narrow exception to its general practice of looking to State law to determine corporate status. The Commission will continue to treat all entities that qualify as corporations under State law as corporations for FECA purposes.

Section 110.1(g) Contributions by Limited Liability Companies

Section 110.1(g)(1) Definition

LLCs are a relatively recent creation of state law. Wyoming enacted the first LLC statute in 1977, but the majority of these laws have been enacted since 1990. Callison and Sullivan, *Limited Liability Companies,* section 1.5 (1994). LLCs are a cross between the traditional corporation and a partnership, sharing both corporate and partnership attributes. Like partnerships, LLC members are generally taxed as partners at the state level, but enjoy the liability protection of corporate shareholders. To varying extents, LLCs possess other corporate attributes, including free transferability of interest, centralized management, and the ability to accumulate capital. This section defines a limited liability company as a business entity recognized as a limited liability company under the laws of the State in which it is established.

Section 110.1(g)(2) Treatment of Certain LLCs as Partnerships

This section follows the IRS ''check the box'' rules at 26 CFR 301.7701–3, stating that a contribution by an LLC that elects to be treated as a partnership by the IRS, or does not elect treatment as either a partnership or a corporation, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e). Since most LLCs choose this tax classification, or acquire it through default, they will be covered by this paragraph.

One commenter urged the Commission to adopt Alternative A, which would treat all LLCs as partnerships. However, the structure of LLCs that elect corporate tax treatment is such that they would find it impracticable, if not impossible, to comply with such a requirement. As the Tax Court has explained, partnerships, and by analogy partnership-like LLCs, ''must maintain a capital account for each member that directly reflects the actual amounts paid in respect to that particular membership interest. There is no such requirement for corporations. A corporation is a separate legal entity, whereas a partnership is an aggregate of its partners. A corporation does not have individual drawing accounts for each of its shareholders.'' *Board of Trade of Chicago* v. *Comm. of Internal Revenue,* 106 T.C. 369, 391 n.21 (1996). Therefore, corporate-like LLCs would be hard-pressed to comply with this requirement.

Another commenter requested that the Commission continue the approach set forth in past advisory opinions, i.e., treat LLCs as persons subject to the 2 U.S.C. 441a(a) contribution limits. The Commission is concerned that this approach could lead to possible proliferation problems, since a person who was a member of numerous LLCs could contribute up to the statutory limits through each of them. Also, if any

of the LLC's members were prohibited from contributing, e.g., were foreign nationals or government contractors, the LLC itself would be precluded from making contributions, under this approach.

Section 110.1(g)(3) Treatment of Certain LLCs as Corporations

This section states that an LLC that elects to be treated as a corporation by the IRS pursuant to 26 CFR 301.7701–3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114. Part 114 contains the Commission's rules governing corporate and labor organization activity under the FECA.

The Commission notes that, in order to determine the type of entities subject to corporate treatment under the FECA, it must first identify those business entities that should be defined as corporations. This term is not explicitly defined anywhere in the Act or the regulations. The only reference in the legislative history directs the Commission to look to State law to determine the status of professional corporations, but is silent as to all other types of corporations. *See* H.R. Rept. 1438 (Conf.), 93d Cong., 2d Sess. 68–69 (1974).

Since Congress did not ''directly address the precise question at issue''—whether the definition of *corporation* includes LLCs—the Commission is free to refer to the IRS rules, as long as its interpretation is not ''manifestly contrary to the statute.'' *Chevron U.S.A., Inc.* v. *National Resources Defense Council, Inc.*, 837 U.S. 837, 842–44 (1984). The Chevron analysis is the standard used by Federal courts to determine whether or not an agency has construed the statute permissibly. *See also, Clifton* v. *FEC,* 114 F.3d 1309, 1318 (1st Cir. 1997); *Bush-Quayle '92 Primary Committee, Inc.* v. *FEC,* 104 F.3d 448, 452 (D.C.Cir. 1997)

When an LLC elects corporate status for IRS purposes, it is essentially telling the IRS that its organizational structure and functions are more akin to a corporation than a partnership. This allows the LLC to accumulate capital at the corporate level, and to take advantage of favorable tax treatment of corporate losses and dividends received. Rather than attempting to determine whether an LLC more closely resembles a corporation versus a partnership, or simply classifying an LLC as a partnership without any reference to its actual structure or form, the Commission believes it can most effectively carry out FECA's intent by classifying LLCs according to their federal tax status, which most accurately describes whether an LLC's structure and function are more akin to a ''corporation'' or a ''partnership.''

The U.S. Supreme Court has interpreted congressional intent behind the FECA's prohibition of corporate contributions as a legitimate ''need to restrict the influence of political war chests funneled through the corporate form'' and to ''regulate the substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization.'' *FEC* v. *National Conservative Political Action Committee,* 470 U.S. 480, 501 (1985), quoting *National Right to Work Committee* v. *FEC,* 197, 210 (1982). Following the IRS' ''check the box'' approach carries out this policy.

An LLC electing federal corporate status ''checks the box'' because it seeks to enjoy the benefits of corporate status. Such corporate advantages include, *inter alia,* flexible merger rules, the avoidance of personal income tax for LLC members, preferential tax treatment on dividends received and deductions for corporate losses, subject to certain rules. LLCs might also elect corporate status in preparation for an upcoming corporate merger.

Election of IRS corporate status confers specific benefits on those LLCs, just as State-chartered corporations enjoy similar advantages. Thus the Commission is fulfilling the purpose behind FECA's corporate prohibitions by regulating these entities as corporations.

As explained above, the Commission's adoption of the IRS treatment is consistent with the underlying policy regarding the ability of corporate-like LLCs to amass capital through the special advantages conferred upon them by the Federal Government. Moreover, the courts have consistently held that, where a corporation does not exist under State law, Federal agencies may appropriately refer to the policies behind Federal statutes in identifying the ''corporate-like'' activities of non-corporate forms. In *Morrissey* v. *Commissioner,* 296 U.S. 344 (1935), the Supreme Court held that a trust could be classified as an association, conferring what was, at that time, the equivalent of corporate tax status, for Federal income tax purposes. Instead of looking to State status or ''labels,'' the Court explained that, ''[w]hile the use of corporate forms may furnish persuasive evidence of the existence of an association, the absence * * * of the usual terminology of corporations cannot be regarded as decisive. Thus an association may not have 'directors' or 'officers' but the 'trustees' may function 'in much the same manner as the directors in a corporation' for the purpose of carrying on the enterprise.'' *Id.* at 358 (internal citations omitted). Similarly, in *U.S.* v. *McDonald & Eide, Inc.*, 865 F.2d 73, 76 (3d Cir. 1989), the Third Circuit Court of Appeals held that, because there is no Federal common law of corporations, ''state law is used where persuasive, but ignored when not in accord with the policies'' of the underlying federal statute, in this case the Internal Revenue Code.

The IRS' ''check the box'' rules, read in conjunction with 26 U.S.C. 7704, which requires publicly-traded partnerships to be taxed as corporations for tax purposes, require publicly-traded LLCs to be taxed as corporations. Paragraph 110.1(g)(3), therefore, further provides that publicly-traded LLCs shall be treated as corporations for FECA purposes.

Section 110.1(g)(4) Contributions by Single Member LLCs

The IRS in its comment pointed out that single member LLCs are not eligible for treatment as partnerships—that is, they cannot ''check the box'' to elect partnership treatment. Consistent with this approach, section 110.1(g)(4) states that a contribution by a single-member LLC that does not elect corporate tax treatment shall be attributed only to that member. Because of the unity of the member and the LLC in this situation, it is appropriate for attribution of the contribution to pass through the LLC and attach to the single member under these circumstances.

Section 110.1(g)(5) Information Provided to Recipient Committees

One commenter pointed out that, if this approach were adopted, a recipient committee might inadvertently accept an illegal contribution, because the committee would have no way of knowing whether the LLC had opted for corporate tax treatment and was therefore prohibited from contributing to Federal campaigns. The Commission further notes that the recipient committee would have no way of knowing how to attribute a contribution made by an eligible multi-member or single member LLC, unless that information was provided. Section 110.1(g)(5) accordingly states that an LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that the LLC is eligible to make the contribution.

Subchapter S Corporations

Subchapter S corporations are corporations that, if they meet certain size and other requirements, can choose to be taxed as unincorporated businesses for Federal income tax purposes under Subchapter S of the Internal Revenue Code, 26 U.S.C. 1361–1379. Because there is some general similarity between the Federal income taxation of LLCs and Subchapter S corporations, the NPRM also sought comments as to whether Subchapter S corporations should be allowed to make otherwise lawful contributions in Federal elections. Under that approach, contributions by a Subchapter S corporation would be attributed only to the individual stockholders of the corporation as their personal (noncorporate) contributions and would be subject to their limits under the Act.

Because Subchapter S corporations are considered corporations under the laws of all fifty States, the final rules do not address this issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that limited liability companies are already covered by the Act, and the proposed revisions would clarify the extent to which they could contribute to Federal campaigns. In some instances this amount would be greater than is presently the case, while in others it would be smaller. In neither case would the amount involved qualify as ''significant'' for purposes of the Regulatory Flexibility Act.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.1 is amended by adding new paragraph (g) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)

* * * * *

(g) *Contributions by limited liability companies (''LLC'').*

(1) *Definition.* A limited liability company is a business entity that is recognized as a limited liability company under the laws of the State in which it is established.

(2) A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701–3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).

(3) An LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701–3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant to 11 CFR Part 114.

(4) A contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701–3 shall be attributed only to that single member.

(5) An LLC that makes a contribution pursuant to paragraph (g)(2) or (g)(4) of this section shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

* * * * *

Dated: June 25, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–16605 Filed 7–9–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for veterinary prescription use of selamectin solution as a topical parasiticide for dogs and cats.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution. Selamectin kills adult fleas and prevents flea eggs from hatching for 1 month, and it is indicated for the prevention and control of flea infestations (*Ctenocephalides felis*), prevention of heartworm disease caused by *Dirofilaria immitis*, and treatment and control of ear mite (*Otodectes cynotis*) infestations in dogs and cats; in dogs for treatment and control of sarcoptic mange (*Sarcoptes scabiei*); and in cats for treatment of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections. The NADA is approved as of May 26, 1999, and the regulations are amended by adding 21 CFR 524.2098 to reflect the approval.

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

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 26, 1999, because no active ingredient (including any ester or salt of the drug) has been previously approved in any other application filed under section 512(b)(1) of the act.

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

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

2. Section 524.2098 is added to read as follows:

§ 524.2098 Selamectin.

(a) *Specifications.* Each milliliter contains 60 or 120 milligrams of selamectin.

(b) *Sponsor.* See 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount.* 2.7 milligrams of selamectin, topically, per pound (6 milligrams per kilogram) of body weight once a month.

(2) *Indications for use.* Kills adult fleas and prevents flea eggs from hatching for 1 month, and it is indicated for the prevention and control of flea infestations (*Ctenocephalides felis*), prevention of heartworm disease caused by *Dirofilaria immitis*, and treatment and control of ear mite (*Otodectes cynotis*) infestations in dogs and cats. Treatment and control of sarcoptic mange (*Sarcoptes scabiei*) in dogs. Treatment of intestinal hookworm (*Ancylostoma tubaeforme*) and roundworm (*Toxocara cati*) infections in cats. For dogs and cats 6 weeks of age and older.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 29, 1999.

George A. Mitchell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 99–17507 Filed 7–9–99; 8:45 am]

BILLING CODE 4160–01–F

POSTAL RATE COMMISSION

39 CFR Part 3002

Mission Statement for Office of Consumer Advocate

[Order No. 1255; Docket No. RM99–3]

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission has replaced a set of policy guidelines for its Office of Consumer Advocate (OCA) with a mission statement. The superseding statement retains current duties, adds responsibilities, and identifies opportunities for public input. This action clarifies and updates the OCA's role.

DATES: Effective July 12, 1999.

ADDRESSES: Send correspondence about this rule to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street, NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Washington, DC, 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: Before recommending decisions on rate and classification matters, the Postal Rate Commission is required by the Postal Reorganization Act to provide an opportunity for a hearing on the record to ''the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public.'' 39 U.S.C. 3624(a). In Order No. 433, issued June 1, 1982, the Commission issued policy guidelines for the officer of the Commission (OOC) (and for the permanent staff assigned to the OOC) with respect to representing the interests of the general public. Subsequently, the Commission designated a staff unit as the Office of the Consumer Advocate (OCA). The director of the OCA is generally appointed as the officer of the Commission responsible for representing the interests of the general public. *See* 39 CFR 3002.7 (describing the OCA) and Appendix A to 39 CFR Part 3002 (the policy statement).

Development of Superseding Mission Statement

The Commission has developed a mission statement of the OCA (presented as Appendix A to this order) to update and reemphasize the importance of the role of OCA in proceedings before the Commission. The mission statement encompasses the duties outlined in the 1982 guidelines, but broadens the scope of the activities the OCA is expected to undertake in representing the general public interest. The purpose of the mission statement also is to apprise the general public and participants in proceedings before the Commission of the current role of the OCA in the work of the agency and the opportunities available for public input in Commission proceedings.

The mission statement is not intended to limit the means by which the OCA represents the interests of the general public. The Commission will not consider either the scope of the activities of the OCA or whether positions taken by OCA adhere to the mission statement as an issue in any proceeding.

The OCA will participate in formal dockets before the Commission, including rulemaking dockets initiated by the Commission, and make evidentiary and legal presentations to the Commission on issues arising in such dockets. OCA shall participate in informal and formal discovery to obtain information needed to support its presentations or otherwise to inform the Commission on pending issues. For its presentations, OCA may utilize its staff resources and, where appropriate, retain expert witnesses, consultants, or counsel to assist it in preparing and presenting material to the Commission. OCA will present views to the Commission on behalf of members of the general public, including individuals and small businesses as both senders and recipients of mail, who are not otherwise adequately represented by private parties in proceedings before the Commission. The OCA shall also participate in dockets to assure that a full record is developed for Commission consideration.

In the event the Commission indicates through a notice of inquiry or other suitable procedure that it wishes to explore certain issues, including the reconsideration of previous decisions to evaluate their continued viability, the OCA shall contribute to this process on the same basis as all other parties. The OCA shall also carry out such other functions as may be assigned to it by the Commission.

The Commission values appropriate contact between the OCA and members of the general public and organizations representing consumers or advocating on behalf of consumers. Such contacts can provide useful information as to general public postal needs and preferences; widely held concerns about postal rates and services; and complaints about, or perceptions of, deficiencies in the Postal Service. Such contacts also can be the source of specific suggestions for changes in the Domestic Mail Classification Schedule (DMCS) and the DMCS Fee Schedule, and for other public suggestions for changes in which the Commission may be interested. Such suggestions may include matters that are not the subject of specific Commission proceedings.

The OCA is expected to maintain regular contact with consumer advocacy or public interest groups that may wish to participate, either on a full or limited basis, in proceedings before the Commission. The OCA may consult with such groups and shall facilitate, through informational or logistical means, the ability of such groups to present their positions to the Commission. The OCA also shall serve as a resource to assist individuals and otherwise unrepresented entities to understand how they may best present their views to the Commission.

Other Responsibilities

In addition to the duty to participate in Commission proceedings, the OCA staff is expected to stay abreast of the body of published information germane to postal rate and classification matters, as well as regulatory and non-regulatory developments in related fields such public utilities, telecommunications, and transportation. The OCA staff is expected to increase its understanding of mailer needs and postal operations by appropriate field study, including the use of surveys where appropriate. Public contacts and informational undertakings of this nature are appropriately related to the OCA's function.

Impact on Existing Policy Statement

The mission statement that has been developed supersedes the ''Policy Guidelines for Representation of the Interests of the General Public in Commission Proceedings,'' which currently appears as Appendix A to 39 CFR Part 3002. Adoption of the mission statement also requires a minor conforming editorial change in 39 CFR 3002.7(c).

Effective Date

The Commission has determined that the mission statement shall take effect upon publication of this notice and order.

List of Subjects in 39 CFR Part 3002

Administrative practice and procedure, Organization and functions, Postal Service.

For the reasons stated in the preamble, the Postal Rate Commission amends part 3002 of title 39 of the Code of Federal Regulations as follows:

PART 3002—ORGANIZATION

1. The authority citation for part 3002 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662.

2. In § 3002.7(c) remove the phrase ''policy statement'' and add in its place the phrase ''mission statement.''

3. Revise Appendix A to part 3002 as follows:

Appendix A to Part 3002—Postal Rate Commission, Mission Statement of the Office of the Consumer Advocate

The mission of the Office of the Consumer Advocate is to be a vigorous, responsive, and effective advocate for reasonable and equitable treatment of the general public in proceedings before the Postal Rate Commission.

In furtherance of this mission, the Office of the Consumer Advocate will:

1. Give a strong and consistent voice to the views of consumers, especially those that are not otherwise represented in Commission proceedings;

2. Argue for equity on behalf of individuals and small businesses, both as senders and as recipients of mail and mail services;

3. Utilize all means and procedures available under the Commission's rules and applicable law to present evidence and arguments on behalf of consumers in Commission proceedings;

4. Assist in the development of a complete record on issues pending before the Commission;

5. Engage in dialogue with parties or participants in proceedings before the Commission to advance the interests of consumers;

6. Encourage the equitable settlement of issues among the parties and participants in proceedings whenever possible;

7. Promote fair competition between the United States Postal Service and its competitors for the ultimate benefit of consumers;

8. Seek out responsible advocates of consumer interests and encourage their participation in Commission cases;

9. Maintain the highest standards of competence and quality in all evidence and pleadings submitted to the Commission; and

10. Maintain separation and independence from the Commission and its advisory staff in the course of proceedings before the Commission.

Dated: July 7, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–17638 Filed 7–9–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 125–1a; FRL–6375–4]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving a June 1, 1999 request from Ohio for a State Implementation Plan (SIP) revision of the Dayton/Springfield, Ohio ozone maintenance plan. The maintenance plan revision establishes a new transportation conformity mobile source emissions budget for the year 2005. We are also approving the revision of the maintenance plan which reestimates point source growth and allots a larger volatile organic compounds (VOCs) budget to the area's 2005 mobile source sector for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. We are also correcting a typographical error in the original maintenance plan approval.

DATES: This rule is effective on August 26, 1999, unless USEPA receives adverse written comments by August 11, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is USEPA taking today?

Who is affected by this action?

How did the State support its request?

What is transportation conformity?

What is an emissions budget?

What is a safety margin?

How does this action change the Dayton/Springfield, Ohio maintenance plan?

Why is the request approvable?

What Action Is USEPA Taking Today?

In this action, we are approving a revision to the maintenance plan for the Dayton/Springfield, Ohio, ozone maintenance area. The Dayton/Springfield, Ohio ozone maintenance area includes the Counties of Montgomery, Clark, Greene and Miami Counties. The revision will change the mobile source emission budget that is used for transportation conformity purposes. The revision will also change the projected growth in industrial sources (point sources) from the projections in the currently approved maintenance plan. The revision will keep the projected total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth and growth in point and area sources.

We are also correcting a typographical error in the original maintenance plan approval. The original **Federal Register** approval on May 5, 1995, (60 FR 22289) contained a typographical error in Table 1 showing the VOC emissions from the source categories in the Dayton/Springfield area. The 2005 VOC emissions for point and area sources are incorrect in Table 1. The correct number for point source VOC emissions in 2005 should be 98.0 and the correct number for area sources in 2005 should be 63.8 tons of VOC. These corrected numbers match the original submittal from the Ohio Environmental Protection Agency (OEPA) and are documented in the docket materials. This correction does not change the substance of the maintenance plan approval.

Who Is Affected by This Action?

Primarily, the transportation sector represented by the Ohio Department of Transportation and the Miami Valley Regional Planning Commission (the metropolitan planning organization) will benefit from this revision. Although, the long range transportation plan for the Dayton/Springfield area projects higher emissions than currently allowed in the maintenance plan, the conformity rule provides that the maintenance plan can be revised. The Dayton/Springfield maintenance plan does not currently have a ''safety margin'' which can be allocated to the transportation sector. In a **Federal Register** notice (62 FR 44903) published on August 25, 1997, all of the VOC safety margin was allocated to the mobile source budget. Therefore, there is no safety margin to allocate.

Instead, the OEPA and the Regional Air Pollution Control Agency have reestimated the projected growth from industrial sources. Current projections of industrial growth are less than the projections estimated in the approved maintenance plan. The maintenance plan and the projections in the maintenance plan were approved on May 5, 1995, in the **Federal Register** (60 FR 22289). These projections allowed for substantial growth in industrial sources. The growth in industrial sources was offset by reductions from the mobile source sector through implementation of the inspection and maintenance program and cleaner automobiles. If source growth or population growth were to increase as initially projected, the OEPA would need to offset the emissions by implementing a reduction strategy to keep the maintenance plan emissions at the air quality attainment level.

How Did the State Support This Request?

The State provided updated emissions projections and budget numbers to support their request. On June 1, 1999, Ohio formally submitted to USEPA a SIP revision request for the Dayton/Springfield ozone maintenance area. A public hearing on this proposal was held on June 3, 1999. No one from the public commented on the proposed revisions.

In the submittal, Ohio requested to allocate 5.5 tons per day to establish a new 2005 mobile source emissions budgets for VOC for the Dayton, Ohio, ozone maintenance area. The State recalculated the stationary source growth between the years 1990 and 2005 (the last year of the maintenance plan). Stationary sources in 1990 were estimated to contribute 37.4 tons per day of VOC. In 2005 stationary sources were allowed to grow up to 98.0 (this is the corrected number) tons per day of VOC. This is a significant increase in industrial emissions over a 15 year time frame. Growth of stationary source emissions was not as large as earlier anticipated. Based on the revised projections, stationary source growth will be reduced to 92.5 tons per day which is still a significant potential increase. The State requested that 5.5 tons per day of VOC be allocated to the mobile source sector for the conformity budget. The mobile source budgets are used for transportation conformity purposes.

What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, USEPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area, such as Dayton/Springfield, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the mobile source emissions budget established by the maintenance plan. The Dayton/Springfield area has an approved maintenance plan. Our approval of the maintenance plan on May 5, 1995, established the mobile source emissions budgets for transportation conformity purposes. The transportation conformity budget was changed on August 25, 1997, when USEPA approved a revision to the maintenance plan which allocated the 2.4 tons per day VOC safety margin to the mobile source budget. At that time, the mobile source budget changed from 31.7 tons per day of VOC to 34.1 tons per day of VOC.

What Is an Emissions Budget?

An emissions budget is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the mobile source emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level.

What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. For example: the Dayton/Springfield area attained the

one hour ozone standard during the 1989–1991 time period. The State uses 1990 as the attainment level of emissions for the area. The emissions from point, area and mobile sources in 1990 equaled 131.1 tons per day of VOC. The Ohio Environmental Protection Agency projected emissions out to the year 2005 and projected a total of 131.1 tons per day of VOC. The safety margin is calculated to be the difference between these amounts or, in this case, 0 tons per day of VOC. Table 1 gives detailed information on the estimated emissions from each source category and the safety margin calculation.

The 2005 emission projections reflect the point, area and mobile source changes and reductions and are illustrated in Table 1. Please note that these numbers reflect the corrected typographical error to the point and area source 2005 numbers.

TABLE 1.—NO_X AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, STARK COUNTY

[Tons/day]

Source category	1990	2005
VOC Emissions:		
Point	37.4	98.0
Mobile (on-road)	103.6	34.1
Biogenic	105.2	105.2
Area	54.9	63.8
Totals	301.1	301.1

Safety Margin = 1990 total emissions − 2005 total emissions = 0 tons/day VOC

The emissions are projected to maintain the area's air quality consistent with the air quality health standard. The safety margin credit can be allocated to the transportation sector. The total emission level, must stay below the attainment level or safety level and to be acceptable. The safety margin is the extra safety [points] that can be allocated as long as the total level is maintained.

How Does This Action Change the Dayton/Springfield Maintenance Plan?

It raises the budget for mobile sources and lowers the amount of expected growth in industrial source (point source) emissions. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio requested to change the projected growth of stationary source emissions and to use the difference to add 5.5 tons per day of VOC to the mobile source emissions budget. The SIP revision requests the allocation of 5.5 tons/day VOC, into the area's mobile source emissions budget. The 2005 mobile source emissions budget showing the maintenance plan changes to stationary and area sources are in Table 2. The mobile source emissions budget in Table 2 will be used for transportation conformity purposes.

Table 2 below illustrates that the requested changes can be made to the 2005 mobile source budget and that total emissions will still remain at the 1990 attainment level of total emissions for the Dayton/Springfield maintenance area. Since the area would still be at or below the 1990 attainment level for the total emissions, this allocation is allowed by the conformity rule.

TABLE 2.—MAINTENANCE PLAN CHANGES TO THE 2005 EMISSIONS BUDGET, DAYTON/SPRINGFIELD

[Tons/day]

Source category	1990	2005
VOC Emissions:		
Point	37.4	92.5
Mobile (on-road)	103.6	39.6
Biogenic	105.2	105.2
Area	54.9	63.8
Totals	301.1	301.1

Remaining Safety Margin = 1990 total emissions − 2005 total emissions = 0 tons/day VOC

Why is the Request Approvable?

After review of the SIP revision request, USEPA finds that the requested change in the maintenance plan for the Dayton/Springfield area is approvable. The revised growth estimates for stationary sources are reasonable because the past data between 1990 and 1998 indicate a slower growth rate than in the original maintenance plan. The 5.5 tons per day allocated to mobile sources still allows sufficient growth margin for the stationary sources and maintains the total emissions for the area at the attainment year inventory level as required by the transportation conformity regulations.

USEPA Action

USEPA is approving the requested change to the growth estimates in the maintenance plan and the change to the mobile source budget for the Dayton/Springfield ozone maintenance area.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by August 11, 1999. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 26, 1999.

Administrative Requirements

Administrative Requirements are organized as follows:

A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller
H. Paperwork Reduction Act
I. Executive Order 12898: Environmental Justice
J. National Technology Transfer and Advancement Act
K. Petitions for Judicial Review

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget a description of the extent of USEPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires USEPA to develop an effective process permitting elected officials and other representatives of

state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. USEPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, USEPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, USEPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires USEPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, USEPA 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 USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State, or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Paperwork Reduction Act

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Executive Order 12898: Environmental Justice

Under E.O. 12898 each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's action (revising the emissions budgets in Ohio's maintenance plan for Stark County) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public, especially children and other at-risk populations.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, USEPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

USEPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

K. 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 September 10, 1999. 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, Ozone, Nitrogen oxides, Transportation conformity.

Dated: June 29, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

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 KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(12) to read as follows:

§ 52.1885 Control Strategy: Ozone

(a) * * *

(12) Approval—On June 1, 1999, Ohio submitted a revision to the ozone maintenance plan for the Dayton/Springfield area. The revision consists of revising the point source growth estimates and allocating 5.5 tons per day of VOCs to the transportation conformity mobile source emissions budget. The mobile source VOC budget for transportation conformity purposes for the Dayton/Springfield area is now: 39.6 tons per day of volatile organic compound emissions for the year 2005. The approval also corrects a typographical error in the maintenance plan point and area source numbers for 2005.

[FR Doc. 99–17491 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0160 FRL–6376–4]

Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule for the approval of revisions to the California State Implementation Plan. EPA published the direct final rule on May 13, 1999 (64 FR 25822), approving revisions to rules from the following air pollution control districts: Mojave Desert Air Quality Management District (SCAQMD) and Tehama County Air Pollution Control District (TCAPCD). As stated in that **Federal Register** document, if adverse or critical comments were received by June 14, 1999, the rule would not take effect and notice of withdrawal would be published in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule. EPA will address the comments received in a subsequent final action in the near future. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at (64 FR 25822) is withdrawn as of July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the May 13, 1999 **Federal Register**, and in the proposed rule located in the proposed rule section of the May 13, 1999 (64 FR 25854) **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Particulate Matter.

Dated: June 29, 1999.

Laura Yoshii,

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 removing paragraphs (b)(3)(ii) and (c)(6)(xv)(B).

[FR Doc. 99–17634 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN–217–1–9920a; FRL–6373–9]

Implementation Plan and Redesignation Request for the Williamson County, Tennessee Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is simultaneously approving the lead state implementation plan (SIP) and redesignation request for the Williamson County, Tennessee, lead nonattainment area. Both plans, dated May 12, 1999, were submitted by the State of Tennessee for the purpose of demonstrating that the Williamson County area has attained the lead national ambient air quality standard (NAAQS).

DATES: This direct final rule is effective September 10, 1999 without further notice, unless EPA receives adverse

comment by August 11, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by the Tennessee Department of Environment and Conservation (TDEC) may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104

Tennessee Air Pollution Control Board, 9th Floor, L&C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION:

I. Background—Lead SIP

Section 107(d)(5) of the Clean Air Act as amended in 1990 (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP pursuant to sections 110(a)(2) and 172(c) of the CAA demonstrating how the area will be brought into attainment.

On January 6, 1992, EPA designated the portion of Williamson County around the General Smelting and Refining, (GSR) Inc. (now Metalico-College Grove, Inc.) lead smelter as a nonattainment area for lead. This nonattainment designation was based on lead NAAQS violations recorded by monitors located near the GSR facility during the fourth quarter of 1990 and the second quarter of 1991.

On July 2, 1993, the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP for attaining the lead NAAQS in the Williamson County lead nonattainment area. EPA found the SIP to be inadequate because it did not meet all of the requirements of section 172(c) of the CAA and requested that TDEC make the necessary corrections and submit supplemental information to address the deficiencies.

On June 23, 1995, EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for secondary lead smelters. Because the existing GSR facility could not meet the new NESHAP requirements without extensive modifications, the company elected to build an entirely new lead smelter designed to meet the new NESHAP regulations. Subsequently, on January 16, 1997, TDEC issued a construction permit to GSR, Inc.

In late 1997, the facility was sold and renamed Metalico-College Grove, (MCG) Inc. The new owner proposed changes to the facility's design and submitted a new permit application to TDEC on July 13, 1998, reflecting those changes. At that point, TDEC had begun developing a new lead SIP and redesignation request based on the GSR, Inc. facility. TDEC elected to submit a lead SIP and redesignation request dated September 11, 1998, based on the GSR facility, while acknowledging that a new lead SIP would be necessary to accommodate the new MCG, Inc. smelter, as reflected by the July 13, 1998, permit application.

On December 22, 1998, the old facility was completely shutdown, and the new smelter began operation. As a result, TDEC developed a new lead SIP and redesignation request dated May 12, 1999, based on the new MCG, Inc. lead smelter. Further, TDEC withdrew both the 1993 and 1998 lead SIPs and replaced them with the new lead SIP submittal and redesignation request.

II. Analysis of the State Submittal

The 1999 SIP revision was reviewed using the criteria established by the CAA in section 110(a)(2). Section 172(c) of the CAA specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. EPA has also issued a General Preamble describing how EPA will review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

A. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Williamson County area was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. The Williamson County area has air quality data showing attainment of the lead NAAQS for the years 1996 through 1998 and to date for 1999.

To demonstrate that the area will continue to be in attainment with the lead NAAQS, emission limits were set through the application of reasonable achievable control technologies (RACT) and workplace standards at the MCG facility. The emission limits were evaluated using air dispersion modeling. This modeling predicts the impact of emissions on the environment surrounding the facility and whether or not the area will attain the lead NAAQS. The modeling demonstration submitted by TDEC for the MCG facility shows a predicted maximum quarterly ambient air lead concentration of 0.218 micrograms per cubic meter ($\mu g/m^3$) which is well below the NAAQS for lead of 1.5 $\mu g/m^3$.

B. Emissions Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because it is necessary to support an area's attainment demonstration, the emission inventory must be included with the SIP submission.

TDEC submitted an emissions inventory for the base year 1998. The inventory identifies the secondary lead smelter owned and operated by MCG as the sole major source of lead emissions in the Williamson County area when violations were recorded. The EPA is approving the emissions inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of the CAA.

C. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

States with lead nonattainment areas must submit provisions to assure that RACM (including RACT) are

implemented (see section 172(c)(1)). All smelting processes at the MCG facility are enclosed in a single concrete and steel building, and the building is kept under negative pressure. Baghouses at the facility control emissions from the blast and reverberatory furnaces and associated process equipment. Other than the flues for the indirect fired refining kettles, which contain natural gas combustion products and no lead emissions, the exhausts of the two baghouses and the wet scrubber are the only emission points for the smelter. All of the control measures employed at the MCG facility were evaluated for reasonableness and technological and economical feasibility. EPA has determined that requirements for RACM (including RACT) have been met.

D. Other Measures Including Emission Limitations, and Timetables

Pursuant to 172(c)(6) of the CAA, all nonattainment SIPs must contain enforceable emission limitations, other control measures, and schedules and timetables for compliance.

The emission limits for the MCG facility were submitted as a part of the lead SIP and used in the modeling study. The facility-wide emissions of lead for MCG are limited to 0.863 pounds per hour (lbs/hr). Any relaxation of the emission limits which results in a computer modeling prediction of a maximum quarterly lead concentration off the MCG plant property exceeding 0.218 $\mu g/m^3$ will require a revision of this lead SIP.

The CAA also requires that nonattainment SIPs include other measures and schedules and timetables for compliance that may be needed to ensure the attainment of the relevant NAAQS by the applicable attainment date. Because the Williamson County area has been attaining the lead NAAQS since 1996, it is not necessary to require other control measures or a schedule and timetable for compliance with the NAAQS.

E. Computer Modeling

Section 110(a)(2)(K) of the CAA requires the use of air quality modeling to predict the effect on ambient air quality from any emissions of an air pollutant for which a NAAQS has been established. Therefore, TDEC was required to submit a modeling demonstration with the lead SIP. TDEC used the current long-term ISCLT3 and CTSCREEN models. The 1998 modeling results reveal that the maximum quarterly lead concentration was 0.218 $\mu g/m^3$ which is well below the 1.5 $\mu g/m^3$ lead NAAQS. Furthermore, it is predicted that the maximum quarterly lead concentration in the year 2011 shall be either at or below the 1998 value.

F. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such reductions in emissions of the relevant air pollutant as are required by section 172(c)(2), or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The EPA reviewed the attainment demonstration for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure continued attainment of the lead NAAQS. The EPA found that at the emission rate established through RACT limits and control measures utilized at the old GSR facility has provided continuous attainment of the lead NAAQS since 1996. The emission rate, RACT limits and controls implemented at the new MCG facility are more stringent than those at the old GSR facility and constitute adequate reasonable further progress for the Williamson County area. Furthermore, the air quality monitoring data indicate no exceedances of the lead NAAQS since 1996 and the modeling study predicts no future exceedances. Therefore, no additional incremental reductions in emissions are needed.

G. New Source Review (NSR)

Section 172(c)(5) of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. The federally approved Rule 1200–3–9 of the Tennessee Air Pollution Control Regulations identifies the current specific permitting requirements for nonattainment areas in the State of Tennessee. Rule 1200–3–9—Prevention of Significant Deterioration of Air Quality will replace this rule once the Williamson County lead nonattainment area is redesignated to attainment. An analysis of the redesignation request is discussed later in this document. This rule meets the requirements of the CAA.

H. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

If a violation of the Lead NAAQS occurs in the Williamson County area, TDEC will proceed within 60 days to take appropriate enforcement action for that violation, and, if necessary incorporate a schedule of corrective action into any order issued as a result of that enforcement action. EPA has determined this requirement in the Tennessee SIP to meet the contingency measure provisions of the CAA.

The EPA is approving the lead SIP for Williamson County, Tennessee because it meets the requirements set forth in section 110(a)(2) and 172(c) of the CAA.

III. Background and Analysis of the Redesignation Request

In 1995, TDEC submitted a proposal package requesting that the Williamson County area to be redesignated attainment for the lead NAAQS. Subsequent violations of the lead NAAQS recorded the entire calendar year of 1995 prevented TDEC from submitting a final redesignation request. After the area had sufficient air quality monitoring data, on September 11, 1998, TDEC submitted a lead SIP and redesignation request that has been withdrawn and replaced with a new request dated May 13, 1999.

Pursuant to section 107(d)(3)(E) of the CAA, five requirements must be met before a nonattainment area can be redesignated to attainment. The following describes how each of the five requirements has been achieved.

A. Attainment of the Lead NAAQS

The EPA requires eight consecutive quarters or two calendar years of air quality monitoring data showing attainment to justify a redesignation to attainment for the lead NAAQS. To demonstrate that the Williamson County area is in attainment with the NAAQS for lead, TDEC included air quality data for the years 1996–1998 in the submittal. The data has been quality assured, and can be found in EPA's Aerometric Information Retrieval System. This monitoring data which covers over 12 consecutive quarters without an exceedance, is adequate to demonstrate attainment of the lead NAAQS. TDEC will continue to monitor the air quality of the Williamson County area to verify continued maintenance of the lead NAAQS.

A modeling demonstration is also required to redesignate a lead nonattainment area to attainment. The EPA believes that the modeling analysis included in the 1999 lead SIP also being approved in this document satisfies this

requirement. As stated previously in this notice, the results of the modeling analysis indicate that the lead NAAQS will continue to be maintained.

B. Section 110(k) SIP Approval

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area. Approval actions on SIP elements and the redesignation request may occur simultaneously as in the case of this lead SIP and redesignation request. The SIP elements for the lead SIP were discussed previously in the ''Analysis of the State Submittal'' section of this document. The EPA has determined that the approval of the lead SIP for the Williamson County area meets the requirements of section 110(k).

C. Permanent and Enforceable Improvement in Air Quality

A state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. The MCG facility provides more stringent emission limits and lower emission rates compared to those at the old GSR facility which provide enforceable and permanent emission reductions needed to attain and maintain the lead NAAQS. This is evidenced by the area having more than 12 consecutive quarters of clean air quality data. Furthermore, the modeling study shows that the area will remain in attainment through the year 2011. Subsequently, EPA has determined that there is a permanent and enforceable improvement in the air quality in Williamson County.

D. Compliance With Section 110(a)(2) and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110(a)(2) and part D of the CAA. The EPA has determined that the lead SIP for the Williamson County lead nonattainment area meets the requirements of section 110(a)(2) and part D of the CAA and is approving the submittal in this document. A detailed explanation of the requirements can be found in the ''Analysis of the State Submittal'' section of this document.

E. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request to include a maintenance plan to ensure that the attainment of NAAQS for the relevant pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures necessary to assure that a state will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions must include a requirement that a state will implement all measures for controlling the air pollutant concerned that were contained in the SIP prior to redesignation.

TDEC demonstrated that the lead SIP also being approved in this action is adequate to maintain compliance with the lead NAAQS for at least ten years. The EPA agrees that the lead SIP satisfies the requirements of section 175(A) of the CAA to show maintenance of the lead NAAQS. The control measures and lead emission limits included in the SIP have been implemented at the MCG facility to ensure the continued attainment of the lead NAAQS. The modeling demonstration supporting the lead SIP shows maintenance of the lead standard through 2011, meeting the requirement to show maintenance for ten years. The lead SIP also includes contingency measures that will take effect if a violation of the lead NAAQS occurs. Since these measures were not implemented to attain the lead NAAQS, they can be used as contingency measure for maintenance.

IV. Final Action

EPA is approving the lead SIP and redesignation of the Williamson County lead nonattainment area to attainment because the submittal meets the requirements of the CAA as discussed in this document. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 10, 1999 without further notice unless the Agency receives adverse comments by August 11, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 10, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. 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 September 10, 1999. 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, Intergovernmental relation, Lead, Reporting and record keeping requirements.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 17, 1999.

Winston A. Smith,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *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 RR—Tennessee

2. Section 52.2220(d) is amended by adding at the end of the table a new entry for the Metalico College Grove, Inc. facility to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(d) EPA-approved State Source specific requirements.

EPA-APPROVED TENNESSEE SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* *	*	*	*	*
Metalico College Grove, Inc	N/A	05/12/99	July 12, 1999.	

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the attainment status table for lead is amended by revising the Designated Area, Designation Date and type entry for Williamson County (part) to read as follows:

§ 81.343 Tennesse.

TENNESSEE—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Williamson County (part):				
Area encompassed by a circle centered on Universal Transverse Mercator coordinate 530.38 E, 3961.60 N (Zone 16) with a radius of 1.5 kilometers.	September 10, 1999.	Attainment.		
* * *	*	*	*	*

[FR Doc. 99–17338 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522, 2525, 2526, 2527, 2528, and 2529

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation adopts interim rules published on June 15, 1994, regarding AmeriCorps education awards as final rules. The Corporation is also issuing final rules amending several provisions relating to the AmeriCorps education award, including those governing a participant's eligibility and the ways in which a participant may use the award. These changes will promote efficiency and consistency in providing education awards to AmeriCorps participants.

DATES: The final rules are effective August 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

Through this document, the Corporation adopts as final, with changes, rules regarding AmeriCorps education awards. On March 23, 1994 (59 FR 13772), the Corporation published final rules covering its grant programs, including general provisions regarding the provision of a partial education award for participants who are released because of compelling personal circumstances before completing their terms of service. On June 15, 1994 (59 FR 30709), the Corporation published interim final rules for the National Service Trust governing the AmeriCorps education award and related interest benefits. The Corporation did not receive any comments from the public concerning the interim rules. The Corporation published a proposed rule on April 9, 1999 (64 FR 17302), designed to clarify the rules applicable to the determination of compelling personal circumstances as well as several National Service Trust rules concerning the education award.

Discussion of the Final Rule

The proposed rule gave the public sixty days to submit comments. The Corporation received comments from two persons.

Welfare to Work Transition as Compelling Personal Circumstances

One commenter expressed concern that allowing programs to approve a pro-rated education award for welfare recipients who enroll as AmeriCorps members and thereafter leave their term of service as part of a transition from welfare (e.g., to accept permanent employment) would undermine both an ethic of work and an ethic of service and might cause morale problems among other members who are not welfare recipients. The Corporation has concluded that, on balance, the overriding public policy objective of fostering self-sufficiency among welfare recipients outweighs these concerns.

Transfers by Members From One Program To Another

One commenter urged the Corporation to include in its rules guidance on transfers by members between programs. The commenter believes that this is necessary to ensure consistent policies and procedures in this area. The Corporation believes that these policies and procedures do not rise to the level of a regulation and may be addressed through avenues other than a rule.

Release for Cause

One commenter stated that the Corporation had proposed a definition of ''for cause'' that is too broad. The commenter also objected to the removal

of a requirement that programs explicitly state in advance the circumstances under which members may be released for cause. The Corporation believes that definition of ''for cause'' is consistent with the statutory framework. Section 139(c) of the National and Community Service Act (42 U.S.C. 12593(c)) recognizes only two types of releases from completing a term of service: (1) For compelling personal circumstances; and (2) for cause. The rules spell out in detail the types of situations that constitute compelling personal circumstances and provide that a release for cause ''encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.'' This does not provide programs unlimited discretion to release a member for cause for *any* reason other than compelling personal circumstances or convert members into an ''at will'' status. The rule requires that the reason be sufficient to ''warrant an individual's release from completing a term of service.'' If a member objects to such a determination, the member may pursue a grievance through the process available under the Act to all members.

Benefits for Reinstated Members

One commenter objected to the elimination of a requirement that all members who are reinstated as part of a grievance be credited with missed service hours and be paid the full amount of living allowance withheld during the grievance process. Because there may be instances in which it may not be equitable or appropriate to require a program to provide a reinstated member with credit for missed service hours and the amount of withheld living allowance, the Corporation believes that the statutory grievance process is a better mechanism to resolve these issues on an case-by-case basis.

Explanation of Change Regarding Fair and Equitable Refund Policy Requirement

In several sections regarding the requirement that educational institution receiving disbursements from the National Service Trust first provide verification that they have in effect a fair and equitable refund policy consistent with section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b), the Corporation has added a reference to the relevant U.S. Department of Education regulations. This reference is informational and is intended to improve clarity.

Implementation

These rules will apply to any member who enrolls in a position approved by the Corporation beginning the 1999–2000 program year.

Regulatory Matters

Executive Order 12866

Because this regulatory action makes only minor amendments to existing rules and will involve only small adjustments in operating national service programs, the Corporation has determined that it is not a ''significant'' rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

In addition, the Corporation has concluded that the benefits of this regulatory action (greater consistency, predictability, and equity) outweigh the relatively small costs of implementing the changes.

Regulatory Flexibility Act

Because this regulatory action makes only minor amendments to existing rules and will involve only small adjustments in operating national service programs, the Corporation certifies that it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the regulatory flexibility analyses that are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the rules do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). If the Corporation proposes to modify any of the forms used in connection with determining eligibility of individuals for payments from the National Service Trust, the Corporation will comply with clearance procedures as provided under the Paperwork Reduction Act.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

This regulatory action does not establish requirements that will adversely affect the Year 2000 readiness of national service programs.

List of Subjects

45 CFR Part 2522

AmeriCorps, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2527

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Grant programs—social programs, Student aid, Volunteers.

Accordingly, the Corporation for National and Community Service adopts as final its interim rule adding 45 CFR parts 2525, 2526, 2527, 2528, and 2529, published in the **Federal Register** at 59 FR 30709, June 15, 1994, and amends 45 CFR chapter XXV as follows:

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2522.200 is revised to read as follows:

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility*. An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States.

(b) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS–240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS–1350) issued by the State Department;

(6) A certificate of naturalization (Form N–550 or N–570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N–560 or N–561) issued by the Immigration and Naturalization Service.

(c) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I–551;

(2) Alien Registration Receipt Card, INS Form I–551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

(4) A Departure Record (INS Form I–94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(d) *Secondary documentation.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

3. Section 2522.230 is revised to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances as demonstrated by the participant, or for cause.

(a) *Release for compelling personal circumstances.* (1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(5) through (a)(6) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The participant has the primary responsibility for demonstrating that compelling personal circumstances prevent the participant from completing the term of service.

(4) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(5) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(6) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(7) As an alternative to releasing a participant, an AmeriCorps*State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to

do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps*State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.10 is revised to read as follows:

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

3. Section 2525.20 is amended by revising the definitions for ''Approved school-to-work program,'' ''Education award,'' and ''Qualified student loan'' and by adding a definition for ''Current educational expenses'' in alphabetical order to read as follows:

§ 2525.20 Definitions.

* * * * *

Approved school-to-work program. The term *approved school-to-work program* means a program that is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 *et seq.*).

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment that begins after an individual receives an education award.

Education award. The term *education award* means the financial assistance available under parts 2526 and 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

* * * * *

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

1. The heading for part 2526 is revised to read as set forth above.

1a. The authority citation for part 2526 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2526.10 is revised to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the individual—

(1) Is a citizen, national, or lawful permanent resident alien of the United States;

(2) Is either at least 17 years of age at the commencement of service or is an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g) of this chapter;

(3) Successfully completes a term of service in an approved national service position.

(b) *High school diploma or equivalent.* To use an education award, an individual must—

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Prohibition on duplicate benefits.* An individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(d) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

3. Section 2526.20 is revised to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant who is released prior to completing an originally-approved term of service for compelling personal circumstances and who completes at least 15 percent of the originally-approved term of service is eligible for a pro-rated education award.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

§ 2526.30 [Removed]

§ 2526.60 [Redesignated as § 2526.30]

4. Section 2526.30 is removed and § 2526.60 is redesignated as § 2526.30.

§ 2526.40 [Removed]

§ 2526.70 [Redesignated as § 2526.40]

5. Section 2526.40 is removed and § 2526.70 is redesignated as § 2526.40.

§ 2526.40 [Amended]

6. Newly redesignated § 2526.40 is amended in paragraph (b)(2) by removing the words ''under § 2526.40''.

§ 2526.50 [Removed]

§ 2526.80 [Redesignated as § 2526.50]

7. Section 2526.50 is removed and § 2526.80 is redesignated as § 2526.50 and revised to read as follows:

§ 2526.50 Is there a limit on the number of education awards an individual may receive?

(a) *First and second terms of service.* An individual may receive an education award for only the first and second terms of service for which an education award is available, regardless of the length of the term.

(b) *Release for cause.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for cause counts as one of the two terms of service for which an individual may receive an education award.

(c) *Early release.* If a participant is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the two terms of service for which an individual may receive an education award.

§ 2526.90 [Redesignated as § 2526.60]

8. Section 2526.90 is redesignated as § 2526.60 and revised to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

No. An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans.

§ 2526.100 [Removed]

9. Section 2526.100 is removed.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

1. The heading for part 2527 is revised to read as set forth above.

1a. The authority citation for part 2527 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2527.10 is revised to read as follows:

§ 2527.10 What is the amount of an AmeriCorps education award?

(a) *Full-time term of service.* The education award for a full-time term of service of at least 1,700 hours is $4,725.

(b) *Part-time term of service.* The education award for a part-time term of service of at least 900 hours is $2,362.50.

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service of fewer than 900 hours is—

(1) An amount equal to the product of—

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) 2,362.50; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-approved term of service for compelling personal circumstances is equal to the product of—

(1) The number of hours completed divided by the number of hours in the originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

1. Revise part 2528 to read as follows:

PART 2528—USING AN EDUCATION AWARD

Sec.

2528.10 For what purposes may an education award be used?
2528.20 What steps are necessary to use an education award to repay a qualified student loan?
2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?
2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?
2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

Authority: 42 U.S.C. 12601–12604.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used—

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current cost of attendance at an institution of higher education in accordance with § 2528.30 through § 2528.50;

(3) To pay expenses incurred in participating in an approved school-to-work program in accordance with § 2528.60 through § 2528.70.

(b) *Multiple uses.* An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current cost of attendance at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current cost of attendance at an institution of higher education, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) It has in effect a fair and equitable refund policy, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22, and must ensure an appropriate refund to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided;

(iv) Individuals using education awards to pay for the current cost of attendance at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance; and

(B) The sum of the individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act and the individual's veterans' education benefits as defined in section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The sum of—

(1) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act; and

(2) The individual's veterans' education benefits as defined under section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An institution of higher education that receives a disbursement of education award funds from the Corporation must have in effect, and must comply with, a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, an institution of higher education's refund policy is deemed ''fair and equitable'' if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

§ 2528.60 What steps are necessary to use an education award to pay expenses incurred in participating in an approved school-to-work program?

(a) *Required information.* Before disbursing an amount from an education award to pay expenses incurred in participating in an approved school-to-work program, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the school-to-work program as requested by the Corporation, including verification that—

(i) It is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101);

(ii) The amount requested will be used to pay all or part of the individual's cost of participating in the school-to-work program;

(iii) It will ensure an appropriate refund, consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22, to the Corporation if an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the program and notify the individual of the payment.

§ 2528.70 What happens if an individual withdraws or fails to complete the period of enrollment in an approved school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) An approved school-to-work program that receives a disbursement of education award funds from the Corporation must provide a fair and equitable refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment.

(2) For purposes of this part, a refund is deemed ''fair and equitable'' if it is an amount consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b) and 34 CFR 668.22.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

1. Revise part 2529 to read as follows:

PART 2529—PAYMENT OF ACCRUED INTEREST

Sec.

2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?
2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?
2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which the individual has obtained forbearance?

Authority: 42 U.S.C. 12601–12604.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position?

(a) *Eligibility.* The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if—

(1) The individual successfully completes a term of service in an approved AmeriCorps position; and

(2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount.* The percentage of accrued interest that the Corporation will pay is the lesser of—

(1) The product of—

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and (2) 100.

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation.* The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

Dated: June 28, 1999.

Wendy Zenker,

Chief Operating Officer.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[ET Docket No. 98–42, FCC 99–135]

Regulations for RF Lighting Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules for radio frequency (RF) lighting devices. This action seeks to eliminate unnecessary regulations and to support the introduction of new and beneficial products while ensuring that radio communications services are protected from interference. Accordingly, we are relaxing the line-conducted emission limits below 30 MHz for new consumer RF lighting devices.

DATES: Effective October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Anthony Serafini, Office of Engineering and Technology, (202) 418–2456.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 98–76, FCC 99–58, adopted June 9, 1999, and released June 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (TW–A257), 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, 445 12th Street, S.W., Room CY–B400, Washington, D.C. 20554.

Summary of the Report and Order

1. The *Report and Order* amends Part 18 of the Commission's rules for radio frequency (RF) lighting devices. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current Commission rules, however, do not easily accommodate these technological advancements and thus hinder the further development and implementation of these new products. This action eliminates unnecessary regulations and supports the introduction of new and beneficial products while ensuring that radio communications services are protected from interference. Accordingly, we are relaxing the line-conducted emission limits below 30 MHz for new consumer RF lighting devices.

2. On April 1, 1998, the Commission adopted a *Notice of Proposed Rulemaking (Notice)* 63 FR 20363, April 24, 1998, that proposed rules to accommodate a new generation of RF lighting devices. These new devices offer potential benefits for both consumer and non-consumer users. General Electric (GE) developed a new Electrodeless Fluorescent Lamp (EFL) for typical low power consumer applications such as in-home lighting. The GE lamp is designed to operate in the 2.2–2.8 MHz band. GE claims that its new lamp is more efficient and longer-lasting than incandescent consumer bulbs, and is an improvement over existing low frequency RF lights known as Compact Fluorescent Lamps (CFL). Unlike current RF lighting lamps,

EFLs are nearly identical in size and shape to incandescent bulbs. GE reports that a new 23-watt EFL will provide light similar to a 75-watt standard incandescent bulb and is expected to last two or three times longer than present lamps that use electrodes. GE estimates that, if 10% of consumer lamps were replaced with EFL technology, energy consumption in the United States would be reduced by nearly 1 billion kilowatt hours, saving consumers approximately $1.4 billion each year. The lamp cannot meet the current FCC line-conducted emission limits for consumer RF lighting devices without the addition of filters which would significantly increase costs and would impede market acceptance. In 1995 the Commission granted GE a waiver to begin marketing the lamp under relaxed line-conducted emissions limits in the 2.2–2.8 MHz band. In the *Notice,* the Commission proposed to codify the relaxed line-conducted emission limits.

3. The Commission proposed to relax the consumer line-conducted emission limits in Section 18.307(c) by 22 dB in the 2.2–2.8 MHz band, to the existing non-consumer limit of 3000 microvolts. This proposal was consistent with the waiver granted to GE. The 2.2–2.8 MHz band is allocated to several Government and Non-Government communications services, including aviation, international fixed public, maritime, private land mobile, Government fixed and mobile, and standard frequency and time transmissions. Operations on these frequencies include, among others, Civil Air Patrol, ship to shore communications, broadcast auxiliary, local government and police operations. GE had performed analyses showing that there would be little risk of interference to these services if the line-conducted emissions limits were relaxed. GE marketed several hundred thousand EFLs under the waiver, with no reported incidents of interference to communications services.

4. We believe that it is appropriate to relax the line conducted limits to facilitate the use of this new technology. GE has demonstrated through experience gained under its waiver that the proposed relaxation of the line conducted limits does not pose any significant risk of causing interference to radio communications services. We find no evidence in the record to support argument that the proposed relaxation of the line-conducted limit could increase spurious emissions due to interactions with other products. Further, we find no basis for the argument that the proposed relaxation could lead to increased harmonic emissions in other frequency bands because the Commission proposed no changes to the existing line-conducted and radiated emissions limits that apply to harmonic and spurious emissions outside the proposed frequency band.

5. We also believe that the frequency range for the rule relaxation should be changed to be consistent with international standards. We believe that harmonization with the frequency band used internationally will promote trade and reduce product costs. Accordingly, we are relaxing the consumer line-conducted emission limit in Section 18.307(c) by 22 dB to 3000 microvolts in the 2.51–3.0 MHz band, as proposed.

6. *Labelling.* The terms of the GE waiver required that an advisory label be placed on the product packaging warning of possible interference to maritime operations. In the *Notice,* we asked for comment on whether to continue to require this advisory label and whether a similar label should be required for all RF lighting devices. Commenters recommend requiring a label for RF lighting devices to warn users about potential interference to communication services.

7. We believe that an advisory label is appropriate to further ensure that RF lighting devices are not used in close proximity to critical navigation and communications equipment. Accordingly, we are requiring manufacturers of RF lighting devices to provide an advisory statement, either on the product packaging or with other user documentation, similar to the following: ''This product may cause interference to radio communications and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz.'' Variations of this language are permitted provided all the points of the statement are addressed.

8. *Transient Emissions.* In the *Notice,* we invited comment as to whether any requirements may be necessary to address transient emissions that can occur when RF lighting devices are turned on and off. We find that requirements for transient emissions are unnecessary. The limited potential for added interference does not warrant additional regulations. Accordingly, we choose not to adopt any requirements for transient emissions.

9. *It is ordered* that Part 18 of the Commission's Rules and Regulations *is amended* as specified and will be effective October 13, 1999 in order to allow sufficient time for the Paperwork Reduction Act requirements due to the new labelling regulations. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA),[1] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rule Making (''Notice''). Written public comments were requested on the IRFA. The Final Regulatory Flexbility Analysis (FRFA) in this Report and Order conforms to the RFA.

Need for and Objective of the Rules

11. This rule making proceeding was initiated to obtain comment regarding proposals to change the regulations for RF lighting. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current Commission rules, however, do not easily accommodate these technological advancements and thus hinder the further development and implementation of these promising new products. This action seeks to relax the Part 18 regulations to accommodate new and beneficial products while ensuring that other important communications services continue to be protected from interference. This action will potentially benefit all entities using RF lighting technologies, including small entities.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. No commenting parties raised issues specifically in response to the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

13. The RFA generally defines a ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' [2] In addition, the term ''small business'' is the same meaning as the term ''small business

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 601(6).

concern'' under the Small Business Act (''SBA''), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the SBA, a ''small business concern'' is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).[4]

14. The Commission has not developed a definition of small entities applicable to RF Lighting Devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts.[5] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

15. Under Part 18 of the FCC rules, consumer ISM equipment must be approved under the FCC certification process and non-consumer equipment is subject to verification. No changes are being made to the testing and approval process requirements for RF lighting product.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The new rules adopted in this *Report and Order* are intended to support the further development and implementation of new RF lighting products. These actions will benefit all RF lighting manufacturers, including small entities.

17. U.S. manufacturers have developed new RF lighting technologies that offer potential economic and environmental benefits to consumers and industry. General Electric (GE) has developed an Electrodeless Fluorescent Lamp (EFL) that operates between 2.2–2.8 MHz. This is a more efficient, longer lasting consumer lamp that is an alternative to normal incandescent light bulbs. EFL lamps represent a new generation of technology beyond the existing low frequency RF lights known as Compact Fluorescent Lamps (CFL), which are limited in their applications due to their non-traditional design using curved tubing. EFL lamps are nearly identical in size and shape to incandescent bulbs and therefore, are expected to have greater consumer applications and acceptance over CFL lamps.

18. The existing RF lighting rules were adopted many years ago for products operating at relatively low frequencies and do not easily accommodate new state-of-the-art RF lighting technologies. We are modifying our rules to accommodate these new technologies to the extent possible while still ensuring that communications services are protected from harmful interference.

Report to Congress

19. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 18

Business and industry, Household appliances, Radio, Report and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, Part 18 of the Code of Federal Regulations, is amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

Authority: 47 U.S.C. Sec. 4, 301, 302, 303, 304 and 307.

2. Section 18.213, paragraph (d) is added to read as follows:

§ 18.213 Information to the user.

* * * * *

(d) Manufacturers of RF lighting devices must provide an advisory statement, either on the product packaging or with other user documentation, similar to the following: This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz. Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

3. Section 18.307(c) is revised to read as follows:

§ 18.307 Conduction Limits.

* * * * *

(c) RF lighting devices:

Frequency (MHz)	Maximum RF line voltage measured with a 50 uH/50 ohm LISN (uV)
Non-consumer equipment:	
0.45 to 1.6	1,000
1.6 to 30	3,000
Consumer equipment:	
0.45 to 2.51	250
2.51 to 3.0	3,000
3.0 to 30	250

* * * * *

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[3] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF36

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). A total of approximately 296,240 hectares (731,712 acres) of riverine riparian and upland habitat are designated. Critical habitat is located in Pima, Cochise, Pinal, and Maricopa counties, Arizona. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, the Service considered economic and other relevant impacts

prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (referred to as ''pygmy-owl'' in this final rule) is in the Order Strigiformes and the Family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6¾ inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Some individuals are grayish brown, rather than reddish brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is diurnal (active during daylight), and its call, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species.

The pygmy-owl in Arizona occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets (''bosques''), Sonoran desertscrub, and semidesert grasslands. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. The pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

The pygmy-owl's primary habitats historically were in riparian cottonwood (*Populus fremontii*) forests, but the subspecies currently occurs primarily in Sonoran desertscrub associations and mesquite bosques consisting of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis velutina,* and *P. glandulosa*), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Carnegiea giganteus*) and organ pipe (*Stenocereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). Primary prey include various reptiles, insects, birds, and small mammals (Proudfoot 1996).

Pygmy-owls are considered non-migratory throughout their range by most authors, and have been reported during the winter months in several locations, including Organ Pipe Cactus National Monument (R. Johnson, unpubl. data 1976, 1980, Tibbitts, pers. comm. 1997). Major Bendire collected pygmy-owls along Rillito Creek near Camp Lowell at present-day Tucson on January 24, 1872. The University of Arizona Bird Collection contains a female pygmy-owl collected on January 8, 1953 (University of Arizona 1995). Similarly, records exist from Sabino Canyon documenting pygmy-owls on December 3, 1941, and December 25, 1950 (U.S. Forest Service, unpubl. data). These winter records demonstrate that pygmy-owls are found within Arizona throughout the year, and do not appear to migrate southward to warmer climates during the winter months.

Previous Federal Action

We included *Glaucidium brasilianum cactorum* in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated *G. b. cactorum* to category 1 status throughout its range in our November 21, 1991, Notice of Review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. The petitioners also requested designation of critical habitat. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we published a proposed rule to list the pygmy-owl as endangered in Arizona and threatened in Texas on December 12, 1994 (59 FR 63975). We proposed designation of critical habitat in Arizona. After a review of all comments received in response to the proposed rule, we published a final rule on March 10, 1997 (62 FR 10730), listing the pygmy-owl as endangered in Arizona. We determined that listing in Texas was not warranted. We also determined that critical habitat designation for the Arizona population was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior (Secretary) for failure to designate critical habitat for the cactus ferruginous pygmy-owl and the plant, *Lilaeopsis schaffneriana var. recurva,* (Huachuca water umbel) (*Southwest Center for Biological Diversity* v. *Babbitt,* CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating: ''There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available.''

On November 25, 1998, in response to a motion by the Plaintiffs requesting clarification of the October 7, 1998, order, Judge Marquez further ordered ''that within 30 days of the date of this Order, the Secretary shall issue the

proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within 6 months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.''

On December 30, 1998, we proposed 295,775 ha (730,565 ac) as critical habitat in Arizona for the pygmy-owl (63 FR 71820). On April 15, 1999, we released the draft economic analysis on proposed critical habitat and reopened the public comment period for 30 days (64 FR 18596).

The processing of the December 30, 1998, proposed rule and this final rule does not conform with our Listing Priority Guidance for Fiscal Year 1998 and 1999 published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

According to early surveys referenced in the literature, the pygmy-owl, prior to the mid-1900s, was ''not uncommon,'' ''of common occurrence,'' and a ''fairly numerous'' resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers and various tributaries (Breninger 1898 in Bent 1938, Gilman 1909, Swarth 1914). Bendire (1888) noted that he had taken ''several'' along Rillito Creek near Fort Lowell, in the vicinity of present-day Tucson, Arizona. Records indicate that pygmy-owls were initially more common in xeroriparian habitats (very dense thickets bordering dry desert washes) than in more open, desert uplands (Monson and Phillips 1981, Johnson and Haight 1985, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Davis and Russell 1990). The pygmy-owl was also noted to occur at isolated desert oases supporting small pockets of riparian and xeroriparian vegetation (Howell 1916, Phillips *et al.* 1964).

The historical use of Sonoran desertscrub habitats by pygmy-owls is not as clear. A disproportionately low number of historical records from desertscrub habitats may be due to the focus of early collection efforts along rivers where humans tended to concentrate, while the upland areas received less survey. Historical records of pygmy-owls do exist for Sonoran desertscrub in areas such as the Santa Catalina foothills and in ''groves of giant cactus'' near New River, north of present-day Phoenix. Kimball (1921) reported one pygmy-owl in a mesquite tree in the foothills of the Santa Catalina Mountains. Fisher (1893) took 2 pygmy-owl specimens near New River, and observed ''several others'' in mesquite and large cacti.

The northernmost historical record for the pygmy-owl is from New River, Arizona, approximately 56 kilometers (35 miles) north of Phoenix, where Fisher (1893) reported the pygmy-owl to be ''quite common'' in thickets of intermixed mesquite and saguaro cactus. Four eggs were collected in Phoenix, Maricopa County by G.F. Breninger on May 18, 1898, and R.D. Lusk collected five eggs at Cave Creek on April 12, 1895. Pygmy-owls were also detected in central Arizona at the Blue Point Cottonwoods area, at the confluence of the Salt and Verde rivers, in 1897, 1949, 1951, 1964, and 1971 (AGFD unpubl. data, Phillips *et al.* 1964, Millsap and Johnson 1988). Additionally, pygmy-owls were detected at Dudleyville on the San Pedro River as recently as 1985 and 1986 (AGFD unpubl. data, Hunter 1988).

The easternmost record for the pygmy-owl is from 1985 at the confluence of Bonita Creek and the Gila River (Hunter 1988). Other records from this eastern portion of the pygmy-owl's range include a 1876 record from Camp Goodwin (current day Geronimo) on the Gila River (Aiken 1937), and a 1978 record from Gillard Hot Springs, also on the Gila River (Hunter 1988). Pygmy-owls have been found as far west as the Cabeza Prieta Tanks in 1955 (Monson 1998).

Over the past several decades, pygmy-owls have been primarily found in Sonoran desertscrub communities in southern and southwestern Arizona consisting of palo verde, ironwood, mesquite, acacia, bursage, and columnar cacti (Phillips *et al.* 1964, Davis and Russell 1984 and 1990, Monson and Phillips 1981, Johnson and Haight 1985, Johnsgard 1988). Recently pygmy-owls have also been found in wooded drainages within semidesert grasslands in southern Arizona (unpubl. data). These sites are closely associated with xeroriparian habitats.

Historically, pygmy-owls were associated with riparian woodlands in central and southern Arizona. Plants present in these riparian communities include cottonwood, willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). These trees are suitable for cavity nesting, while the density of mid- and lower-story vegetation likely provides necessary protection from predators and an abundance of prey. Mesquite bosque communities are dominated by mesquite trees, and are described as mesquite forests due to the density and large size of the trees. This habitat type provides for all of the necessary habitat components of the pygmy-owl.

The Arizona upland subdivision of the Sonoran Desert provides an over-story of mature saguaros which are suitable for cavity nesting, as well as large mesquites and other trees which may be used for nesting, as well as perch and cover sites. Saguaro cavities are also used for roosting, perching, and caching food (Scott Richardson, Arizona Game and Fish Department, pers. comm. 1998). The mid- and lower-stories are comprised of a variety of mesquite, palo verde, ironwood, acacia, graythorn (*Ziayphus obtusifola*), bursage, cholla (*Opuntia* spp.), prickly pear (*Opuntia* spp.), and annual and perennial grass species. As in riparian habitat, the larger trees provide perches for foraging and protection from predators. Adequate vegetation in mid- and lower-stories appears to be important, and likely provides protection from predators and a higher density of prey items including lizards, small birds and mammals, and insects.

In central and southern Arizona, the pygmy-owl's primary habitats are riparian deciduous forests and woodlands, mesquite bosques, Sonoran desertscrub, and semidesert and Sonoran savanna grasslands with drainages lined with mesquite; although most recent observations have occurred primarily in Sonoran desertscrub associations of palo verde, bursage, ironwood, mesquite, acacia, and giant cacti such as saguaro and organ pipe (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988, Aaron Flesch pers. comm. 1999). Farther south in northwestern Mexico, pygmy-owls occur in Sonoran desertscrub, Sinaloan thornscrub, and Sinaloan deciduous forest as well as riverbottom woodlands,

cactus forests, and thornforest (Enriquez-Rocha *et al.* 1993).

Pygmy-owls at Organ Pipe Cactus National Monument have been detected primarily in relatively dense, lush Arizona uplands desertscrub associations on bajadas. Visually dominant plants at the pygmy-owl sites include saguaros, organ pipe cactus, ironwood, triangle-leaf bursage, foothill paloverde (*C. Microphyllum*), mesquite, whitethorn and catclaw acacia (*Acacia constricta* and *A. greggii*), numerous cholla, prickly pear cacti, ocotillo (*Fouquieria splendens*), various *Lycium* spp., and creosotebush (*Larrea tridentata*) (Smith 1996). In addition to the dense bajada desertscrub habitat described above, pygmy-owls have been documented in several large xeroriparian habitats in lower bajada or valley floor areas that have dense saguaro stands; however, some sites have much less dense adjacent upland areas dominated chiefly by creosotebush. Xeroriparian habitat at these sites consist of mesquites, foothill and blue paloverde (*Cercidium microphyllum* and *C. flordum*), desert willow (*chilopsis lineraris*), catclaw acacia, ironwood, and soapberry (*Sapindus saponaria*) (Smith 1996).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. ''Jeopardize the continued existence'' (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical (50 CFR § 402.02).

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain the habitat components necessary for the primary biological needs of a species but are likely to develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal, or the capacity to develop those habitat components. The primary constituent elements are found in areas that support or have the potential to support Sonoran riparian deciduous woodlands, Sonoran riparian scrubland, xeroriparian forests, tree-lined drainages in semidesert and Sonoran savanna grasslands, and the Arizona upland subdivision of Sonoran desertscrub (Brown 1994). Within these biotic communities, specific plant associations that are essential to the primary biological needs of the pygmy-owl include, but are not limited to, the following—cottonwood, willow, ash, mesquite, palo verde, ironwood, hackberry, saguaro cactus, and/or organ pipe cactus. Specifically, larger diameter trees and cacti provide not only nesting substrate, but also roosting, perching, foraging, and dispersal habitat, while smaller trees and shrubs provide for the same functions except nesting.

In river floodplains, the presence of surface or subsurface water is important in maintaining pygmy-owl habitat. Riverine riparian woodlands and thickets are dependent on availability of groundwater at or near the surface

(Brown 1994). Surface or subsurface moisture may also be important in maintaining various prey species.

Methods

In developing this final rule, we formed an interconnected system of suitable and potential habitat areas extending from the Mexican border through the northernmost recent pygmy-owl occurrence east of Phoenix. Areas designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, are essential to the conservation of the species, and are in need of special management considerations or protection.

In an effort to map areas essential to the conservation of the species, we used data on known pygmy-owl locations to initially identify important areas. We then connected these areas based on the topographic and vegetative features believed most likely to support resident pygmy-owls and/or facilitate movement of birds between known habitat areas. Facilitating movement of birds between habitat areas is important for dispersal and gene flow (Beier and Noss 1998). In selecting areas, we avoided private lands to the extent possible if State and Federal lands were present that could meet the conservation needs of the species. However, we are designating critical habitat in some largely privately owned areas, such as the area northwest of Tucson which supports the greatest known concentration of pygmy-owls in Arizona.

In selecting areas of critical habitat, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to pygmy-owl conservation. Given the short period of time in which we were required to complete this final rule, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated critical habitat boundaries, only lands containing, or are likely to develop, those habitat components that are essential for the primary biological needs of the pygmy-owl are considered critical habitat. Existing features and structures within this area, such as buildings, roads, aqueducts, railroads, and other features, do not contain, and are not likely to develop, those habitat components and are not considered critical habitat.

In selecting areas as critical habitat, we attempted to exclude areas believed to be adequately protected, or where current management is compatible with pygmy-owls and is likely to remain so into the future. We excluded National Park lands (Organ Pipe Cactus National Monument and Saguaro National Park) and National Wildlife Refuges (Cabeza Prieta and Buenos Aires National Wildlife refuges). We also excluded non-Federal lands covered by a legally operative incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act. However, we did not exclude areas currently managed in a manner compatible with pygmy-owls where such management may not be assured in the future (e.g., county and State parks).

In addition, lands of the Tohono O'odham Indian Nation are not included in this final rule. We are aware that pygmy-owls and pygmy-owl habitat likely exist on the Nation, and we believe these lands are important to the species' continued existence in Arizona. However, the short amount of time given by the court to designate critical habitat precluded us from adequately coordinating with the Nation to obtain pygmy-owl location and habitat information. In addition, we were unable to assess whether current or future Tribal management is likely to maintain pygmy-owls into the future, although the probable existence of both pygmy-owls and pygmy-owl habitat led us to believe that current management may be compatible with the species. As explained in the ''Summary of Changes from the Proposed Rule'' section of this final rule, Tribal grazing allotments have also been excluded.

We did not designate all pygmy-owl historical or potential habitat as critical habitat. We only designated those areas that we believe are essential for the conservation of the pygmy-owl and in need of special management or protection.

In summary, the critical habitat areas described below, and protected areas either known or suspected to contain some of the primary constituent elements but not designated as critical habitat (e.g., National Park land, National Wildlife Refuge lands, etc.), constitute our best assessment of areas needed for the species' conservation. Also, we have appointed a Cactus Ferruginous Pygmy-owl Recovery Team that will develop a recovery plan for the species. The experts on this team will conduct a far more thorough analysis than we were able to conduct in the short amount of time allowed by the Court Order. Upon the team's completion of a recovery plan, we will evaluate the plan's recommendations and reexamine areas designated as critical habitat.

Critical Habitat Designation

In determining areas that are essential for the survival and recovery of the species, we used the best scientific information obtainable in the time allowed by the court. This information included habitat suitability and site-specific species information. To date, limited survey effort or research has been done to identify and define specific habitat needs of pygmy-owls in Arizona or to completely quantify their distribution. Only preliminary habitat assessment work has begun over small portions of the State, primarily on Bureau of Land Management (BLM) lands.

We emphasized areas containing most of the verified pygmy-owl occurrences, especially recently identified locations. In order to maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting pygmy-owls. These corridors or connecting areas, which have not been well surveyed connect recent sites and areas where suitable habitat remain. These corridors or connecting areas, while supporting some habitat suitable for nesting, were primarily included to facilitate dispersal and may contain more foraging, perching, and roosting habitat than actual breeding habitat. While habitat of similar quality occurs outside of these corridors, we anticipate that the use and importance of these corridors will increase over time if and when habitat outside of the corridors becomes unsuitable in the future.

Table 1 shows the approximate acreage of critical habitat designation by county and land ownership. Critical habitat for the pygmy-owl includes river floodplains, Sonoran desertscrub, and semidesert grassland communities in Pima, Pinal, Maricopa, and Cochise counties, Arizona. To provide additional information, we have grouped areas designated into critical habitat units (see maps). A brief description of each unit and our reasons for designating those areas as critical habitat are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP

[Note: acreage estimates are derived from Arizona Land Resource Information System data based on the cited legal descriptions]

Ownership	County				Total
	Pima	Cochise	Pinal	Maricopa	
FS	.....	.....	5,065	33,323	38,388
BLM	21,913	.....	69,579	.....	91,492
STATE	158,974	2,371	273,541	.....	434,886
PRIVATE	61,830	2,461	71,634	68	135,993
OTHER	18,166	.....	12,787	.....	30,953
TOTAL	260,883	4,832	432,606	33,391	731,712

Unit 1

This unit lies between Buenos Aires National Wildlife Refuge and the Tohono O'odham Indian Nation, consisting of primarily State Trust lands, with some dispersed private ownership. This area contains semidesert and Sonoran savanna grasslands with a series of xeroriparian washes extending from the Baboquivari Mountains to Altar and Brawley washes. Uplands primarily consist of grasslands with dispersed mesquite trees, and a very few isolated saguaros in some areas, mostly occurring at the extreme north end of the unit. Dominant tree species in riparian areas include mesquite, ash, and hackberry.

This unit is located in the Altar Valley, which recently has had several pygmy-owls documented. Not until 1998 had systematic surveys in this unit and adjacent areas been initiated; as a result, at least nine new pygmy-owl sites have been found (Harris Environmental Group, Inc. 1998; AGFD unpubl. data; Aaron Flesch, pygmy-owl surveyor, pers. comm. 1999). These new sites are located in riparian and xeroriparian habitats and wooded drainages within semidesert grassland and Sonoran savanna grassland communities. Since the turn of the century, many areas that were historical semidesert and Sonoran savanna grasslands in the Altar Valley have developed into habitats similar to Sonoran desertscrub (Brown 1994). It is unclear at this time what role this transition has played in the distribution of pygmy-owls in the region.

Habitat in Unit 1 is suitable for nesting and dispersal habitat for pygmy-owls; however, nesting opportunities are generally greater in the washes because of a higher incidence of large diameter trees that may provide cavities for nesting. This unit is important for conservation of the species because it contains several pygmy-owl sites and it is close to other recent or currently active sites on the nearby refuge. It also provides opportunities for demographic and genetic interchange between pygmy-owls in Mexico and the United States as well as expansion of populations for recovery. Critical habitat in this area, together with protected lands on the refuges, National Monument, and habitat on the Nation, constitutes a large block of pygmy-owl habitat.

Unit 2

This unit connects habitat on the Tohono O'odham Indian Nation to habitat in Saguaro National Park West and Tucson Mountain County Park. Ownership in this area is primarily BLM, State Trust, Bureau of Reclamation, Pima County, and some private lands. The area consists of Sonoran desertscrub, mesquite bosques interspersed by washes, and some retired agricultural lands. This east-west habitat corridor, together with the ''Garcia Strip'' of the Nation, includes suitable habitat for occupancy, movement, and genetic interchange of pygmy-owls between the Nation and the western Tucson region.

Unit 3

This narrow unit connects suitable habitat in Unit 2 and Saguaro National Park west to Unit 4, which has the highest known concentration of pygmy-owls in Arizona. The land ownership in this area is mostly private. The area consists of Sonoran desertscrub, mesquite bosques interspersed by washes, and some retired agricultural lands. This area includes a recent pygmy-owl site west of Interstate 10 and provides a connection to habitat in the northwest Tucson region. Because of existing and past land management practices and development, this area contains the narrowest habitat linkage among other areas of critical habitat.

Few options currently exist for movement of pygmy-owls in this portion of their known range based on our limited knowledge of their movement among areas at this time (Scott Richardson, pers. comm. 1998). The pygmy-owl's flight pattern typically consists of a series of short, direct flights, perching in trees or shrubs usually less than 100 m (328 ft) apart (Glenn Proudfoot, pers. comm, 1999 and Scott Richardson, pers. comm. 1999).

Unit 4

This unit is located in the northwest portion of Tucson north of Interstate 10 and contains the highest known concentration of pygmy-owls in Arizona. This unit contains mostly private and County lands. The area includes known locations of pygmy-owls and adjacent habitats and is bounded by La Cholla Boulevard to the east, Cortaro Road to the south, Interstate 10 to the west, and the Tortolita Mountains to the north. In the immediate Tucson area, and to the south of Unit 4, very little suitable habitat remains due to residential, commercial, and agricultural development. Historically, these upland and riparian areas may have supported pygmy-owls. The area of critical habitat contains stands of ironwood, acacia, and saguaro, mesquite bosques, and several washes, and includes the most contiguous and highest quality pygmy-owl habitat based on current information (Scott Richardson, pers. comm. 1998; Wilcox *et al.* 1999).

Units 5a and 5b

Unit 5 includes 2 habitat corridors that connect habitat in Unit 4 to riparian habitats to the north on the Gila River (5a) and to the east on San Pedro River (5b). Land ownership is mostly BLM, State Trust, and private. This area also includes recent pygmy-owl occurrences in southern Pinal County, although only a limited number of surveys have been conducted to determine if pygmy-owls are present in much of this area. Relatively intact riparian woodland habitats still remain along much of these portions of the Gila and San Pedro rivers. These units contain historical pygmy-owl locations and/or areas thought to contain suitable upland

habitat (Dave Krueper, BLM, pers. comm. 1998).

Limited habitat assessment has been completed within these corridors and few historical or current pygmy-owl occurrences have been documented. However, the BLM has conducted some habitat assessments on their lands in Unit 5a and rated the habitat suitability for pygmy-owls as moderate to high (Dave Krueper, pers. comm. 1998). We included these two corridors primarily because they constitute areas for dispersal, and also for nesting where nesting habitat is present. Upon field review of habitats present in both of these units, we believe they could facilitate movement through these areas, which would act as dispersal corridors. In addition to dispersal habitat, nesting habitat is also present in uplands with saguaros and in washes where large diameter trees are present. The majority of the nesting habitat in this region is in Unit 5a, although some large diameter trees are also located in some of the washes in Unit 5b, and may contain some potential nesting cavities. Where possible, we avoided the higher elevation areas, which likely provide lower quality habitat.

We are only beginning to understand the importance of upland habitat to the pygmy-owl. Although historical observations of pygmy-owls were almost exclusively in riparian woodlands (Breninger 1898 in Bent 1938), almost all of the recent records of pygmy-owls have been in Sonoran desertscrub, and mesquite bosque upland areas, semidesert grasslands, and washes. Based on the current information, we believe these two corridors (5a and 5b) provide a high potential for supporting resident and/or dispersing pygmy-owls through this area. Without these habitat linkages, demographic and genetic connectivity and exchange may not be maintained between known populations in the greater Tucson region and riparian habitats in the Gila and San Pedro rivers.

Unit 6

This unit includes the riparian woodlands of the middle and lower San Pedro River and a portion of the Gila River. There were four pygmy-owls documented in the mid-1980s from lower San Pedro River woodlands. Similar riparian woodlands and associated upland habitats with saguaro cactus are present along the San Pedro upstream (south) to approximately the town of Cascabel.

The San Pedro River riparian corridor connects to the Gila River to the north. This section of the Gila River also contains riparian woodland habitats, which we believe are suitable for pygmy-owls (Dr. Roy Johnson, National Park Service (Retired) pers. comm. 1998). We are designating these areas as critical habitat because of the importance, based on the early records of naturalists during the late 1800s and early 1900s, of riparian woodland habitats, the presence of suitable habitat, and the linkage these areas provide to other historical locations and suitable habitat to the north.

Unit 7

This unit links riparian habitat on the Gila River to other upland habitats and ultimately to the remaining woodland habitat along the Salt River where pygmy-owls were collected in the 1940s and 1950s and where this species was recorded in the early 1970s. Land ownership in this area is primarily BLM, State Trust, Forest Service, and some dispersed private. Although recent surveys have not located pygmy-owls in riparian areas in this unit, riparian woodland habitats remain along portions of the Salt River in this area (Roy Johnson pers. comm. 1998), and we cannot rule out pygmy-owl use of the area because pygmy-owls may use areas only periodically and may not be detected. In delineating critical habitat in this unit, we considered elevation, topographic features, and existing developed areas and determined that a habitat linkage that includes Sonoran upland desertscrub will provide connectivity and suitable habitats between riparian woodland habitats along the Gila and Salt rivers.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR § 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR § 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conferencing on proposed critical habitat for the pygmy-owl was not requested by any Federal agency.

Activities on Federal lands that may affect the pygmy-owl or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit from the Environmental Protection Agency, will be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the pygmy-owl is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that riparian vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/ Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920, facsimile 505–248–6922).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(3) Regulation of water flows, damming, diversion, and channelization by Federal agencies; and

(4) Regulation of grazing, mining, or recreation by the BLM or Forest Service.

Summary of Comments and Recommendations

In the December 30, 1998, proposed rule, all interested parties were requested to submit comments or information that might bear on the designation of critical habitat for the pygmy-owl (63 FR 71820). The first comment period closed March 1, 1999. The comment period was reopened from April 15 to May 15, 1999, to once again solicit comments on the proposed rule and to accept comments on the draft economic analysis (72 FR 18596). Comments received from March 2 to April 14, 1999, were entered into the administrative record during the second comment period.

All appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and invited to comment. In addition, newspaper notices inviting public comment were published in the following newspapers in Arizona: Arizona Republic, Tucson Citizen, Arizona Daily Star, Sierra Vista Herald, Green Valley News and Sun, The Bulletin, The Tombstone Tumbleweed, and Nogales International. The inclusive dates of these publications were January 4 to 12, 1999, for the initial comment period; January 26 to February 4, 1999, to advertise the public hearings; and April 21 to 29, 1999, for the second comment period.

We held three public hearings on the proposed rule, including at Coolidge (February 10, 1999), Sierra Vista (February 11, 1999), and Tucson, Arizona (February 12, 1999). The hearings were also held to solicit comments on the proposed rule to designate critical habitat for the Huachuca water umbel, *Lilaeopsis Schaffneriana* var. *recurva* (63 FR 71838). A notice of hearings and locations was published in the **Federal Register** on January 26, 1999 (64 FR 3923). A total of 89 people attended the public hearings, including 10 in Coolidge, 28 in Sierra Vista, and 51 in Tucson. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested four Arizona ornithologists, who are familiar with this species and were not on the appointed Cactus Ferruginous Pygmy-owl Recovery Team, to peer review the proposed critical habitat designation. However, only one of the peer reviewers submitted comments. He concluded that ''sound scientific information about habitat requirements and movements is the most essential matter related to the conservation of the CFPO (pygmy-owl).'' Further, he summarized, ''I oppose this designation because it is not based on adequate scientific data, and also because it detracts from the path of gathering good data by wasting public resources on needless, time-consuming actions related to bureaucratic process, not species conservation.''

We received a total of 21 oral and 268 written comments during the 2 comment periods. Of those oral comments, 4 supported critical habitat designation, 16 were opposed to designation, and 1 provided additional information but did not support or oppose the proposal. Of the written comments, 59 supported designation, 182 were opposed to it, and 21 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 10 Federal agencies, 7 State agencies, 9 local governments, and 242 private organizations, companies, or individuals.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the pygmy-owl. Comments of a similar nature are grouped into 9 issues relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: Biological Justification and Primary Constituent Elements 1a) Comment: How could the Service determine areas essential for conservation of the species since little is known about their habitat needs? Designation of critical habitat should be delayed until it is determinable and better information becomes available on the species. Stale, inaccurate data were used in the proposal.

Service Response: Under sections 4(a)(3)(A) and 4(b)(6)(C) of the Act, critical habitat must, to the maximum extent prudent and determinable, be designated at the time of listing. If there is insufficient information to perform the required impact analysis of designation, or the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat, it may be delayed up to 1 year. On December 12, 1994, we published a proposed rule to list the pygmy-owl as endangered with critical habitat (59 FR 63975). On March 19, 1997, we published a final rule listing this species as endangered. In that final rule, we determined that designaton of critical habitat was not prudent, because of the potential harm to the species from publishing precise location maps as required for critical habitat designation (62 FR 10730). Given the amount of time since the pygmy-owl was listed as endangered (over 20 months), a ''not determinable finding'' is no longer possible. Because of the October 7, 1998, court order, we must now designate critical habitat using the best information currently available.

Although much additional biological information for this species is needed, some of its biological needs are known. In making this designation, we reviewed all pygmy-owl records within the historical range of this subspecies in Arizona. To the extent possible, given the short time available, we utilized the most current scientific literature; vegetation descriptions; information from outside sources such as species experts, agencies, and others; and field reconnaissance of specific areas in developing this final rule.

1(b) Comment: The Service, in partnership with counties and municipalities, needs to develop science-based surveys and studies to determine recovery efforts needed.

Service Response: We agree that additional surveys and ecological studies are needed. We are currently working with Pima County in their efforts to conduct comprehensive studies within the County, that will serve as the foundation for their Habitat Conservation Plan, which is currently under development. We encourage others to complete surveys and life history studies on their lands to assist them in managing for pygmy-owls. We welcome new partnerships with any entity in order to conserve pygmy-owls.

1(c) Comments: There is no biological justification or analysis to designate unoccupied areas or use a ''connect the dots approach'' in determining areas as critical habitat. Some areas in Units 1, 2, 5b, 6, and 7 are not connected by habitat and should not be included.

Service Response: Much of the area designated as critical habitat has never been surveyed for pygmy-owls. Therefore, it is unknown if owls are currently present. We designated critical habitat in areas that include sites we believed were essential for the conservation of the species and those needing special management considerations. Pygmy-owls may be present in those areas. We also believe areas between recent sightings play an important role and are essential to conservation of the species for the following reasons—(1) it is unknown if owls are in fact using these areas due to the lack of past survey effort; (2) areas of suitable or potentially suitable habitat located between areas of known owl occurrence are very important to allow pygmy-owls to colonize new areas; (3) they provide areas where pygmy-owls can disperse or facilitate movement between occupied areas for genetic interchange; and (4) they require special management considerations.

There are some areas within the critical habitat boundaries that, by definition of the primary constituent elements, are not critical habitat. We have provided additional habitat element descriptions where possible for each mapping unit to assist landowners and managers in identifying areas containing these elements or where these elements have the potential to develop on their lands. Refer to the description of each unit within this final rule.

Much of southern Arizona contains areas that provide potentially suitable habitat that may support pygmy-owls. However, as directed in section 3(5)(A)(i and ii) of the Act, we have only designated those areas that we believe are essential to conservation of the species. Pygmy-owls may be present in some of those areas, but many areas have not yet been surveyed.

(1d) Comment: How could the Service determine critical habitat when it doesn't know what viable populations are necessary to recover the species?

Service Response: A population viability analysis for this species has not been undertaken, however, we are required to designate critical habitat to the maximum extent prudent and determinable using existing information. Although population viability information will be useful in developing a recovery strategy for the species, it is not required to make this determination of critical habitat. A population viability analysis is unavailable for many species due to the lack of demographic information, habitat requirements, and other information required for an analysis. Studies to determine viable population levels for the pygmy-owl could not be conducted within the time frame given by the court and are not required by the Act for designation of critical habitat.

1(e) Comment: Critical habitat should not be designated until a recovery plan is completed.

Service Response: Although having a recovery plan in place is extremely helpful in identifying areas as critical habitat, the Act does not require a plan be prepared prior to such designation. Section 4(c) specifically requires that critical habitat be designated at the time a species is listed, or within 1 year if not determinable at listing. Once a recovery plan is finalized, we may revise the critical habitat described in this final rule if appropriate, to reflect the goals and recovery strategy of the recovery plan.

1(f) Comments: Only riparian areas should be designated since Sonoran desertscrub is only marginal habitat for pygmy-owls in Arizona. The Service should stress riparian restoration in recovery efforts for the pygmy-owl.

Service Response: At the time the pygmy-owl was listed, it was almost exclusively known from historical records to occur in riparian woodlands and mesquite bosques. Since these early records, all active sites have been located in Sonoran desertscrub, xeroriparian, or desert grassland habitats. Based on our current knowledge, both riparian and other habitat types appear to be important.

1(g) Comments: The habitat assessment key should have been used to identify areas of critical habitat. Some areas that rated low using this key were designated critical habitat, such as in Units 1 and 5b. Why were these two units included since they are of low quality? Why was Unit 1 designated when there have never been owls present?

Service Response: The BLM developed a habitat assessment key for its use to prioritize areas to survey that may be suitable for pygmy-owls. Not enough information is currently known regarding range-wide habitat requirements to develop a key with specific criteria that would apply to all habitats. Habitats where pygmy-owls have been found in the greater Tucson area are vastly different from other areas of the State, such as Organ Pipe Cactus National Monument and the Altar Valley. The BLM methodology uses specific habitat evaluation criteria to assess distinct habitats found on their lands within specific regions of the State. The BLM believes, and we concur, that it would be inappropriate to use this methodology to identify areas of critical habitat and to evaluate other habitats throughout the State since many of these criteria do not apply to other regions. We are not aware of any completed habitat assessments using the BLM methodology within Units 1 or 5b.

When we originally proposed critical habitat in December, 1998, there was only one documented record of a pygmy-owl in Unit 1. Although very few surveys had been completed in this area previously, potential habitat was present and we believed this area was important to the species. Since then, intensive surveys have been initiated in this unit and the nearby refuge. As a result, nine pygmy-owl sites have been found (Harris Environmental Group 1998; Aaron Flesch, pers. comm. 1999; AGFD unpubl. data 1999). Therefore, we consider this unit essential for recovery of the species. Likewise, other areas we have designated have little survey data to date. Areas where pygmy-owls are not currently known to exist because of lack of or limited survey efforts may also have pygmy-owls. We encourage landowners and managers with suitable habitat described in this rule to conduct surveys for pygmy-owl. We agree that Unit 5b likely contains limited nesting habitat; however, the mesquite-lined washes in this unit provide, at a minimum, dispersal habitat for owls moving between Units 4 and 6.

1(h) Comment: Critical habitat boundaries do not appear to reflect habitat; rather they follow squared-off, arbitrary lines.

Service Response: We are required to describe critical habitat (50 CFR § 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area. Due to the time constraints imposed by the court, the absence of detailed vegetation maps, we followed roads, railroads, and section or township lines wherever possible to delineate the critical habitat boundaries. Some pygmy-owl unsuitable habitat areas may be included in these mapped areas. Under 50 CFR § 424.12(d), when several habitat areas are located in proximity to one another, an inclusive area may be designated as critical habitat.

(1i) Comments: Why are some areas that do not appear to have suitable pygmy-owl habitat or to contain any of the primary constituent elements included as critical habitat? Only those areas with these constituent elements

should be designated (15 USC § 1532 (5)(A) and 50 CFR § 424.12).

Service Response: As previously stated in this document, due to time constraints, we were not able to eliminate areas within the critical habitat boundaries that do not contain, or do not have the reasonable likelihood of ever containing, the primary constituent elements necessary for the pygmy-owl. However, any areas that do not, and cannot, support these elements are, by definition, not considered to be critical habitat, even though they are within the identified boundaries.

(1j) Comments: Areas with reduced value as pygmy-owl habitat should not be included. Commenters cited the following factors as to why their lands had little value as pygmy-owl habitat—lack of some primary constituent elements, ''low-quality'' habitat, nearby major roads, schools, or high-density housing, and lack of saguaros or ironwoods. Some areas may not be suitable because they are adjacent to planned developments such as future road-widening projects or housing developments.

Service Response: We have documented the presence of pygmy-owls near developed lands, roads, and areas that possess some, but not all, of the primary constituent elements. Therefore, we are including areas near developed lands that contain at least some primary constituent elements as critical habitat because owls use these areas. We believe these areas also play an important role for pygmy-owls for some of their life history requirements such as foraging or dispersal. We can not exclude areas as critical habitat because of projected projects or proposed activities, unless the economic impact outweighs the benefit to the species (section 4(b)(2) of the Act). Although ironwoods are commonly found at sites in the northwest Tucson area (Wilcox *et al.* 1999), numerous other historical and recent sites lack ironwoods. Therefore, we do not believe ironwoods are specifically a necessary component for pygmy-owls. Further research is needed to fully understand this species' habitat needs and life history requirements.

(1k) Comment: You should not only designate currently occupied sites, but also sites with suitable or potential habitat that was previously occupied, and also dispersal habitat.

Service Response: The Act (section 3(5)(C)) states that not all areas capable of being occupied by the species should be designated as critical habitat unless we determine that such designation is essential to the species' conservation. In determining what areas are critical habitat, we considered areas and constituent elements that are essential to the conservation of the species and that may require special protection or management considerations (50 CFR § 424.12(b)). Thus, not all areas occupied or potentially occupied by a species are eligible for designation. Our rationale for not designating all occupied pygmy-owl sites as critical habitat are discussed in the section entitled ''Critical Habitat Designation.'' Due to time constraints and because of a lack of survey data to indicate documented pygmy-owl presence, we cannot assert that pygmy-owls are not present in a particular area designated as critical habitat. This critical habitat designation contains areas that may be important for pygmy-owl dispersals.

(1l) Comments: There was no scientific basis for the constituent elements described in the proposed rule. The definition of constituent elements should be expanded to include dispersal habitat such as creosote bush and grasslands. The constituent elements described are vague (violating 50 CFR § 424.12(c)) and are overly inclusive, and should include the required greater detail defining structure, species richness, and juxtaposition of riparian and xeroriparian areas with adjacent upland habitat types. Identified corridors are not based on known movement of owls, and appear to be sheer guesswork.

Service Response: The primary constituent elements described in this final rule are elements for which we have evidence of use by pygmy-owls in Arizona. Smaller diameter trees and shrubs, though not suitable nesting structure, appear suitable for dispersal movements and/or support prey species for pygmy-owls (Proudfoot, pers. comm. 1999). Pure stands of extensive grassland do not support primary constituent elements; however, grasslands with scattered mesquites or other trees or shrubs provide dispersal and foraging habitat and drainages within grasslands containing trees with cavities may also provide suitable nesting habitat. Information regarding movement of pygmy-owls gathered in Arizona and Texas was used to determine suitability of dispersal corridors.

To date, pygmy-owl habitat studies have been limited to descriptive studies in the greater Tucson area. Habitat in this study area is vastly different from sites elsewhere in the State with historical and recent pygmy-owl sightings. In addition to this Tucson habitat study (Wilcox *et al.* 1999), we are aware of two additional habitat studies that are scheduled to begin in the summer of 1999, which will analyze habitats where other pygmy-owls are found in the State. These additional studies will examine habitats used by pygmy-owls in areas containing very different habitats compared to previous studies. Random sites will also be studied in the state to determine use versus availability. These studies will provide valuable information about the habitat needs of pygmy-owls and will be useful to us and others in meeting the conservation needs of the species.

As noted earlier, pygmy-owls use a variety of habitats. We have described in the greatest detail possible in this final rule the constituent elements important to pygmy-owls known at this time. If new information later becomes available as a result of the above mentioned or other studies regarding the habitat needs of this species, we will then evaluate whether a revision of designated critical habitat is warranted. In addition, as new habitat information becomes available that can further refine habitat definitions and descriptions, it will be used in future section 7 consultations and recovery planning for the pygmy-owl.

Issue 2: Take of Private Property/ Additional Burdens on Private Landowners

(2a) Comment: The designation of critical habitat would constitute ''taking'' of private property rights; thus a takings implications assessment, as required by Executive Order 12630, must be conducted.

Service Response: The designation of critical habitat has no effect on non-Federal actions taken on private land, even if the private land is within the mapped boundary of designated critical habitat. Critical habitat has possible effects on activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal action. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to ensure that the landowner's project can be completed without jeopardizing the species or adversely modifying critical habitat.

Executive Order 12630 requires that Federal actions that may affect the value or use of private property be accompanied by a takings implication assessment. As discussed in our response to Issue 9, (McKenney *et al.* 1999), the economic analysis found that designation of critical habitat would have no economic effect above that already imposed by listing. The primary effect of critical habitat designation on private property is to identify areas important for the conservation of the species. In addition, if a Federal action

occurs on those private lands, such as issuance of a Clean Water Act section 404 permit, the Federal action agency would be required to consult with us pursuant to section 7 of the Act if that action may affect the pygmy-owl or its critical habitat. In Arizona, all private landowners that have applied for a section 10 take permit to allow them incidental take of a federally listed species have been issued permits, and all projects that have completed the section 7 consultation process have gone forward.

(2b) Comments: The designation of critical habitat would place an additional burden on landowners above and beyond what the listing of the species would require. The number of section 7 consultations will increase; large areas where no pygmy-owls are known to occur will now be subject to section 7 consultation. Many Federal agencies have been making a ''no effect'' call within unoccupied suitable habitat. Now, with critical habitat there will be ''may effect'' determinations, and section 7 consultation will be required if any of the constituent elements are present.

Service Response: If a Federal agency funds, authorizes, or carries out an action that may affect either the pygmy-owl or its critical habitat, the Act requires that the agency consult with us under section 7 of the Act. For a project to affect critical habitat, it must affect the habitat features important to the pygmy-owl, which are the primary constituent elements described in this final rule. Our view is and has been that any Federal action within the geographic area occupied by the species that affects these habitat features should be considered a situation that ''may affect'' the pygmy-owl and should undergo section 7 consultation. This is true whether or not critical habitat is designated, even when the particular project site within the larger geographical area occupied by the species is not known to be currently occupied by an individual pygmy-owl. All areas designated as critical habitat are within the geographical area occupied by the species, so Federal actions affecting essential habitat features of the species should undergo consultation. Thus, the need to conduct section 7 consultation should not be affected by critical habitat designation. As in the past, the action agency will continue to make the determination as to whether their project may affect a species even when the particular site is not known to be currently occupied by an individual pygmy-owl.

Issue 3: National Environmental Policy Act.

Comment: The designation of critical habitat constitutes a major Federal action significantly affecting the quality of the human environment. An environmental impact statement (EIS) should be prepared.

Service Response: We have determined that Environmental Assessments (EAs) and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October, 1983 (48 FR 49244).

Issue 4: Lands with Habitat Conservation Permits to be Excluded from Critical Habitat.

Comments: It is illegal and unscientific to withdraw critical habitat designation from land covered by an approved or future Habitat Conservation Plan (HCP) incidental take permit. Critical habitat protects land essential for conservation, which is a higher standard than a HCP permit which only assures that jeopardy would not occur. The HCP take permit has no public process analysis or scientific accountability. HCPs should maintain constituent elements. Regional HCPs are preferred to individual permits. Individual HCPs should not be approved until a regional HCP is completed in Pima County.

Service Response: Before we issue a section 10 permit, we must determine that the HCP provides for the conservation of the species. As a part of the permit evaluation process, we must determine whether our action of issuing the section 10 permit is likely to jeopardize the continued existence of the species or result in adverse modification of critical habitat. Thus, when a HCP is approved through a section 10 permit, we will have already determined that critical habitat would not be adversely modified. HCP permits for lands over 5 acres in size are required to go through the NEPA process that involves public participation and comment. Monitoring and adaptive management are important components of the HCP process to ensure that needed actions are taken and that actions can be modified, as needed, as new information is collected.

We agree that maintaining the primary constituent elements is an important consideration in developing HCPs. In addition, we strongly support regional multiple-species HCPs such as the one currently under development by Pima County, and we encourage this broad-based approach to others within the region. Experience gained from development of similar plans indicates that because of their complexity, these plans typically take a year or more to complete. We encourage landowners and members of the public in the region to participate in this planning effort; however, we realize that it would be unrealistic for some to wait until the county's plan is finalized. We cannot preclude any applicant from pursuing an individual HCP pending the development of a regional plan.

Issue 5: Section 7 Consultation and Section 9.

(5a) Comments: How will the Service conduct section 7 consultations on land immediately adjacent to critical habitat; would additional buffers be required?

Service Response: We address all direct, indirect, inter-related, and interdependent effects of projects under section 7 consultation, which could include effects to areas outside of the immediate project area (downstream effects, for example). However, if a project is adjacent to, but not within, critical habitat and has no direct or indirect effect on critical habitat, that would be acknowledged in the section 7 Biological Opinion, and only effects to the species would be addressed.

(5b) Comment: Section 9 does not fully protect habitat absent a critical habitat designation because critical habitat can include unoccupied habitat. There is a clear distinction between the ''jeopardy'' and ''adverse modification of critical habitat'' prohibitions. In its final rule listing the pygmy-owl as endangered, the Service states that clearing of unoccupied habitat is not a section 9 ''take.'' The courts have consistently held that for a party to assert that removal or disturbance of vegetation from an area will result in take of an endangered species, such a party must demonstrate that the species is present in the area or otherwise using it for essential behavioral functions. Where there is no owl, there is no take.

Service Response: We agree that section 9 does not protect unoccupied habitat, i.e., areas from which the pygmy-owl has been extirpated. However, as discussed in our response to comment 2(b) above, section 7 requires consultation on Federal actions that may affect a listed species or its critical habitat. An action agency may determine that a project may affect a species even when the particular site is not known to be currently occupied by an individual pygmy-owl. It is our view that actions affecting suitable pygmy-owl habitat within the known range of the pygmy-owl, whether or not that area has been designated as critical habitat and whether or not it is known to

currently support an individual, should undergo review under section 7.

Issue 6: Designation by Specific Land Ownership.

(6a) Comments: Designation of critical habitat is not necessary on non-Federal lands because vast tracts of Federal and Tribal lands are already protected. For instance, over 87% of Pima County is owned by the government; the Service should move the owls to those lands.

Service Response: The Act defines critical habitat as those areas essential to the conservation of the species and that are in need of special management considerations or protection. We agree that Federal lands provide a significant amount of the habitat currently occupied by the pygmy-owl, and that those lands are essential to the species' conservation. However, much of the currently occupied habitat is on non-Federal land, especially in Pima County. As stated in the proposed rule, we tried to avoid designation on non-Federal lands except when those lands are, because of their location or the habitat they support, necessary to ensure pygmy-owl conservation. We do not believe that Federal and Tribal lands alone, are adequate to ensure the species' conservation.

(6b) Comments: Exemption of Federal lands such as National Parks and National Wildlife Refuges is illegal, violating 50 CFR § 424.12, and draft guidance exhibit 2, pp 5, 11–12, which states that lands must be evaluated regardless of ownership. None of those lands have an owl plan, and there is no basis to claim that future management will be consistent with critical habitat protections. The Service does not have the statutory authority to exclude areas because it feels their current management is compatible with pygmy-owls, and the benefits from exclusion must be greater than that of inclusion.

Service Response: In determining what areas are critical habitat, we consider physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection (50 CFR § 424.14(b)). Organ Pipe Cactus National Monument, Saguaro National Park, and Buenos Aries and Cabeza National Wildlife refuges provide important habitat for the pygmy-owl. These areas were excluded from designation not simply because of ownership, but because we believe these areas are managed in such a way that provides for natural values, including protection of threatened and endangered species. We believe that these specific areas are managed and likely will continue to be managed in a manner compatible with pygmy-owl needs, and are therefore not in need of special management considerations or protection.

(6c) Comments: Exemption of Tribal lands is illegal, and there is no evidence that current densities on Tribal lands are as high as historical levels, nor that the population is increasing. The Service states that, because the owl occurs on the reservation, Tribal management is compatible with pygmy-owls. Failure to designate critical habitat on Tribal lands violates the Equal Protection Clause of the United States Constitution and the Administrative Procedures Act.

Service Response: Given the lack of species' location and habitat information on Tribal lands available at the time of drafting the proposed rule, we were unable to thoroughly assess either the status of the species on those lands, or the management practices currently employed by the tribes. The court's order required publication of a proposed rule within only 30 days and a final rule in 6 months. Given the extensive preparation and review requirements of publishing a proposed rule, our staff had but a few days to develop the critical habitat maps and determine what areas are both essential to the species' conservation and in need of special management considerations or protection. Further, Secretarial Order 3206 requires significant coordination with Tribal governments, as well as several specific determinations, prior to proposing Tribal land as critical habitat. The 30 days allowed by the court precluded the analyses and coordination that would have been necessary before proposing critical habitat on Tribal lands. We therefore based our proposal on the best scientific and commercial information available, as required by the Act.

(6d) Comments: To designate State trust lands because they are owned by the State is arbitrary, capricious, discriminatory, and unlawful; they should be treated as private lands. The Service considers State lands as public lands and therefore assumes that the limitations of use resulting from designation of critical habitat will not adversely affect the landowner. The Service did not justify the assumption that State lands require special management considerations.

Service Response: We first identified areas essential to the conservation of the species. We looked first to Federal, then State lands to develop a configuration that would include most occupied pygmy-owl sites, connected across the species' range. Our reasoning was that the Act clearly puts the largest share of the burden on Federal agencies and Federal lands in conserving listed species. The Act also considers the states to be important partners in species' conservation efforts. Where possible, we therefore proposed Federal and State lands as the primary areas to concentrate pygmy-owl recovery, with private lands included where necessary. As stated in the economic analysis and this final rule, we do not believe the designation of critical habitat will have adverse economic effects on any landowner, including the State of Arizona, above and beyond the effects of listing of the species (McKenney *et al.* 1999).

Future management practices of State trust lands are uncertain in areas we have determined essential to the recovery of this species and may in some instances not be compatible with conservation efforts; therefore, we believe that designation of these lands is warranted. We believe that designation of these and other lands as critical habitat does not result in additional economic or other effects to the landowner above that which would occur from listing the species.

Issue 7: Legal and Procedural Comments.

(7a) Comments: The Service did not consult, nor allow for an appropriate level of involvement with, the State of Arizona, counties, and cities in areas proposed as critical habitat.

Service Response: In regard to the role of local governments in decisions to determine critical habitat, the Act requires we ''give actual notice of the proposed regulation (including the complete text of the regulation) to * * * each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each jurisdiction'' (section 4(b)(5)(A)(ii) of the Act). Due to the limited time allowed by the court and plaintiffs, we were not able to individually contact all of the entities that could be affected by this proposal; however, we notified each affected county, several cities, and many special interest groups of the proposed rule and draft economic analysis. All entities, including the State and local municipalities, were given ample opportunity, during two separate public comment periods and three public hearings, to submit their concerns and have them addressed in the final rule. Numerous local, city, county, State, and Federal agencies provided comments during two public comment periods and three public hearings; we reviewed and considered these comments in developing this final rule.

(7b) Comments: The court order was not to designate critical habitat, but

rather to reconsider whether it was prudent to do so. The court referred to only 12 of the 28 items of evidence the Service provided in its original ''not prudent'' determination. Designation of critical habitat provides no additional benefits to the species and can lead to increased threats from bird watchers or retaliation against the species as happened with the Mexican wolf. The Service lacks sufficient original information and its original not prudent finding was correct until future research is done.

Service Response: The Act requires the Secretary, ''to the extent prudent and determinable,'' to designate critical habitat concurrently with listing a species as threatened or endangered. Regulations under 50 CFR § 424.12(a)(1) state that critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat, or (ii) designation of critical habitat would not be beneficial to the species.

We determined in our final rule listing the species as endangered (62 FR 10730) that critical habitat designation would increase the threat of harassment of owls by bird watchers and increase the potential for vandalism. The court found this determination to be arbitrary and capricious, and remanded the ''not prudent'' finding to us.

As stated in our economic analysis (McKenney *et al.* 1999), we believe that designation of critical habitat for the pygmy-owl provides no significant additional impacts or benefits to the species beyond that which would occur, or is provided, through listing the species as endangered. While we believe this argument fits the second argument for a ''not prudent'' finding, the court order cited a previous finding in the 9th Circuit (*Natural Resources Defense Council* v. *Department of Interior;* 113 F3d 1121, 1126) that it was Congress' intent that the imprudence exception be a rare exception. This and other statements in the court order led us to believe that another ''not prudent'' finding based on the available information would be inconsistent with the court order.

(7c) Comment: The biological benefits of critical habitat are outweighed by the benefits of exclusion.

Service Response: Section 4(b)(2) of the Act and 50 CFR § 424.19 requires us to consider excluding areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species concerned. As discussed in this final rule, we have determined that no adverse economic or other effects will result from this critical habitat designation (McKenney *et al.* 1999). Therefore, no areas were found where the benefits of exclusion outweighed the benefits of including the areas as critical habitat.

(7d) Comments: The Service must consider the entire range, including Mexico, in determining areas of critical habitat. The Service has never found that the Arizona population is a distinct population segment from the Mexican population.

Service Response: Regulations at 50 CFR § 424.12(h) state that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction. We agree that the status of the species in Mexico will be an important consideration in recovery of the species in Arizona. However, maintenance of a healthy population in the U.S. also depends on areas within the pygmy-owls' historical U.S. range, and we have determined that those areas are essential to the species' conservation.

(7e) Comment: The Service failed to comply with a number of required determinations, including Executive Orders 12291, 12630, 12866, and 50 CFR §§ 424.12(c)(d), and § 424.19 as well as the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.

Service Response: These Executive Orders and other Acts are discussed in the ''Required Determinations'' section of this final rule. Issues pertaining to 50 CFR § 424.14(c)(d) and 424.19 are addressed elsewhere in this final rule.

(7f) Comment: Critical habitat will have potential impacts on water resource use by Arizona and local agencies. How has the Service coordinated with these groups to resolve water resources issues?

Service Response: This final rule does not authorize our jurisdiction over water rights, and we do not anticipate impact to local economies or citizens as a result of this designation as we state elsewhere in this rule. Critical habitat designation does not, in itself, restrict groundwater pumping or water diversions; nor does it in anyway restrict or usurp water rights or violate State or Federal water laws. Local agencies, governments, and individuals have had the opportunity to provide comments during two comment periods, and three public hearings. We will work with these groups during the section 7 consultation process as necessary to ensure their activities comply with the Act and other Federal and State laws.

(7g) Comment: Designation of critical habitat on Arizona State trust lands violates the Arizona-New Mexico Enabling Act of 1910.

Service Response: Under the provisions of the Arizona and New Mexico Enabling Act, in 1910, Congress granted title to certain Federal lands within the borders of Arizona to the State of Arizona for the purpose of creating a trust to provide financial support to the Arizona common schools, universities, and other public institutions operated by the State. However, the State trust created under the Enabling Act is not immune from the operation of otherwise applicable Federal law, including the Endangered Species Act. Further, we do not anticipate that critical habitat designation will affect the State's ability to utilize their trust lands in a manner that will provide financial support to State institutions. Even if there are situations where a State activity requires Federal authorization or funding, we do not anticipate any restrictions beyond those that may result from listing the pygmy-owl as endangered.

(7h) Comments: Critical habitat should not have been proposed before an economic and other impacts analysis was completed, and the opportunity to comment on the economic analysis and the proposed rule was limited. Several requests were received to extend the public comment period.

Service Response: We are not required to conduct an economic analysis at the time critical habitat is initially proposed. We published in the **Federal Register** (63 FR 71820) the availability of the proposed rule and invited public comment which we used to develop a draft economic analysis (McKenney *et al.* 1999). We invited public comments for 30 days on this draft analysis, which we believe was sufficient given the short-time frame ordered by the court. Because of the court-ordered time frame, we were not able to extend the public comment period.

(7i) Comment: Maps and descriptions provided are vague and violate the Act and 50 CFR § 424.12(c).

Service Response: This final rule contains the required legal descriptions of areas designated as critical habitat. The accompanying maps are for illustration purposes. If additional clarification is necessary, contact the Arizona Ecological Service Field Office (see **ADDRESSES** section). We identified specific areas referenced by specific legal description, roads, railroads, and other landmarks, which are found on standard topographic maps.

(7j) Comment: Once land is designated as critical habitat it will likely result in a panoply of Federal, State, and local land use laws, and restrictions or extra procedures.

Service Response: We are unaware of any information that indicates any new State or local laws, restrictions, or procedures will result from critical habitat designation. Should any State or local regulation be promulgated as a result of this rule, this would be outside of the authority of the Service under the Act. The comment is correct in that projects funded, authorized, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the Act on the effects of the action on critical habitat. However, as stated elsewhere in this final rule, we do not expect the result of those consultations to result in any restrictions that would not be required as a result of listing the pygmy-owl as an endangered species.

(7k) Comment: Additional areas not identified in the proposed rule should be designated critical habitat.

Service Response: Section 4(b)(4) of the Act requires that designation of critical habitat undergo the regulation promulgation procedures identified under 5 U.S.C. 553. That is, areas designated as critical habitat must first be proposed as such. Thus, we cannot make significant additions in the final rule to the areas included in the proposed rule. Designation of such areas would require new proposed and final rules. The Act explicitly states that not all suitable or occupied habitat be designated as critical habitat, rather only those essential for the conservation of the species (50 CFR § 424.12 (e)).

The pygmy-owl recovery team is currently developing a recovery plan for this species. During the development of a recovery strategy, the team will not only closely examine areas designated as critical habitat but also all lands within the listed population, to determine their importance and role in the recovery of the species. This process will allow substantially more in-depth analysis than we were afforded by the court and plaintiffs to designate critical habitat. If the recovery team, as a result of new information or analysis, further refines those areas designated in this final rule or identifies additional areas which they determine are essential to the conservation of the species, we will evaluate whether a revision of critical habitat is warranted at that time.

Issue 8: Specific Projects and Activities.

(8a) Comments: Critical habitat would affect specific projects such as erosion control measures on Brawley Wash and fire management in the Altar and Falcon Valley regions. Grazing would be affected by designation on private lands.

Service Response: Critical habitat designations only apply to Federal lands, or federally funded or authorized projects on private lands. If there is no Federal nexus or involvement, then additional considerations are not necessary (see Issue 2 above). Where a Federal nexus exists, designation of critical habitat does not preclude projects or activities such as riparian restoration, erosion control, fire management, or grazing if they do not cause an adverse modification of critical habitat. We will work with landowners within designated critical habitat and Federal agencies that are required to consult with us under section 7 of the Act to ensure that land management will not adversely modify critical habitat. We also encourage landowners to restore riparian habitats including erosion control measures, and we can provide financial and technical assistance through our Partners for Fish and Wildlife Program.

(8b) Comment: Designation of areas with existing pipelines and aqueducts would be affected and should be excluded. Routine maintenance of trails should be excluded.

Service Response: Periodic maintenance of existing pipelines, roads, trails, or aqueducts would not typically constitute adverse modification of critical habitat. These areas generally lack the primary constituent elements described in this rule, and it is our intention to exclude such areas by definition. If maintenance would require removal of constituent elements, and Federal involvement is part of that activity, then section 7 consultation may be necessary.

(8c) Comment: Designation of critical habitat may compromise wildfire prevention and suppression activities in those areas.

Service response: We agree that wildfire prevention and suppression activity is very important to protect human life and property, and also from a resource protection standpoint. Fire protection of areas designated as critical habitat will be essential to ensure the conservation of the species. We will work with all landowners and managers responsible for these activities to ensure adequate fire prevention and suppression measures are in place and to protect resource values. Only fire prevention and suppression activity undertaken or funded by a Federal agency would require consultation under section 7 of the Act. Non-Federal activities will not be affected by critical habitat designation.

Issue 9: Economic Impacts.

(9a) Comment: The assumption applied in the economic analysis that the designation of critical habitat will cause no impacts above and beyond those caused by listing of the species is faulty, legally indefensible, and contrary to the ESA. ''Adverse modification'' and ''jeopardy'' are different, will result in different impacts, and should be analyzed as such in the economic analysis.

Service Response: The designation of critical habitat for the pygmy-owl has been evaluated in the economic context known as ''with'' and ''without'' the rule. It was found that the survival of the pygmy-owl makes it necessary that any adverse modification of its habitat would jeopardize the species. Under this condition, any and all economic consequences would be due to the jeopardy call under section 7 of the Act, and an adverse modification without a jeopardy call would not occur. Further, it is our position that both within and outside of critical habitat, Federal agencies should consult under the jeopardy standard if a proposed action is (1) within the geographic areas occupied by the species, whether or not owls have been detected on the specific project site; (2) the project site contains habitat features that can be used by the species; and (3) the proposed action is likely to adversely affect that habitat. The economic consequences identified during the comment period are all due to the listing of the pygmy-owl and not the designation of critical habitat. The economic analysis of designating critical habitat determined that the same regulatory process is in place ''with'' as well as ''without'' the rule, and consequently found no economic effects.

(9b) Comment: The proposed designation of critical habitat will impose economic hardship on private landowners and businesses. There is an expressed concern that the proposed critical habitat designation would have serious financial implications for commercial and residential development businesses. It is suggested that designation would result in reduced property values, lost tax revenues, lost jobs, and foregone economic activity.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the pygmy-owl is not adding any new requirements to the current regulatory process. Since the adverse modification standard for critical habitat and the jeopardy standard are almost identical, the listing of the pygmy-owl itself initiated the requirement for consultation. This

critical habitat designation adds no additional requirements not already in place due to the species' listing.

(9c) Comment: There is an expressed concern that the delay in acquiring Federal permits or the inability to acquire permits for further development, as a result of section 7 consultation, would be an economic hardship to both developers and homeowner associations.

Service Response: The requirement for Federal agency consultation under section 7 of the Act for actions they carry out, fund, or authorize on Federal or non-Federal lands resulted from listing of the species, and no new requirements are imposed by critical habitat designation.

(9d) Comment: There is an expressed concern that the value and security of bonds issued to construct public infrastructure might be threatened by critical habitat designation.

Service Response: Bonds issued by non-Federal entities that are not insured by the Federal Government do not constitute a Federal nexus. However, an incidental take permit issued under section 10 of the Act would still be required if a taking of the pygmy-owl is possible. The designation of critical habitat does not add any additional requirements to the section 10 incidental take permit process.

(9e) Comment: There is an expressed concern that all property owners who will be adversely affected by the designation of critical habitat should be provided just compensation.

Service Response: This designation of critical habitat will not add any additional restrictions and will not affect property owners beyond those restrictions resulting from the listing of the pygmy-owl as endangered.

(9f) Comment: Critical habitat may disrupt current and future Federal, State, and County land management activities and cause economic losses.

Service Response: Federal agencies are required to consult with us when a species is listed under the Act. State and County entities are not required to consult with us unless a Federal nexus exists. The designation of critical habitat does not add any new requirements or restrictions.

(9g) Comment: The designation will have harmful impacts on the quality of life, education, and economic stability of small towns. There is an expressed concern that the proposed critical habitat designation will change water diversions, groundwater pumping, road maintenance and land development.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the pygmy-owl is not adding any new requirements to the regulatory process. Since the adverse modification standard of critical habitat and the jeopardy standard are nearly identical, the listing of the pygmy-owl itself placed the requirement for consultation. This final rule to designate critical habitat adds no additional requirements that were not already in place due to the species' listing.

(9h) Comment: There is an expressed concern that the designation would limit the construction of much needed schools, colleges, and community and recreation centers, thereby threatening the ability of small towns affected by the designation to expand and diversify their economy and to improve education.

Service Response: As previously stated, this final rule designating critical habitat will not impose additional restrictions on private, cities, counties, State or Federal lands. Restrictions already in place due to the listing of the pygmy-owl require consultation with us when there is a Federal nexus. Any limitations or restrictions on construction were imposed due to the species' listing. Additional restrictions are not expected.

(9i) Comment: There is an expressed concern that the economic stability of the towns of Kearny, Hayden, and Winkelman, as well as Pinal and Gila counties, depends on the continued operation of their mining complex, and further regulatory costs would threaten the corporation.

Service Response: Critical habitat designation will not add new restrictions beyond those imposed by the listing of the pygmy-owl.

(9j) Comment: The Service's designation of critical habitat has not adequately considered potential economic implications. There is opposition to the fact that the Service did not prepare an initial regulatory flexibility analysis to address potential impact to small businesses, as required under the Regulatory Flexibility Act.

Service Response: The proposed rule was published under very tight time constraints by the court order on December 24, 1998. At that time we prepared a record of compliance (ROC) that the proposed critical habitat designation would not have a significant economic impact on small entities. A detailed analysis was initiated by a private firm under contract and subsequently, we distributed a draft of the economic analysis for a 30-day public comment period ending in May, 1999. The findings of the economic analysis indicate that the designation of critical habitat adds no new restrictions on economic activity that were not due to the listing of the pygmy-owl. Therefore, there are no economic effects on small entities attributable to this final rule, and a regulatory impact analysis is not required.

(9k) There is a concern that the different jurisdictions impacted by critical habitat designation should be addressed separately; impacts should be addressed as individual cases, not collectively.

Service Response: If the economic analysis would have detected economic effects attributable to the critical habitat designation, then those effects would have been enumerated for each of the areas of critical habitat and would have been estimated for each type of land and management involved. This information would have been used by the Secretary of the Department of the Interior to determine if the benefits of exclusion of the land outweighed the benefits of including the land as critical habitat. There are no economic effects attributable to critical habitat designation so the issue of separating economic effects is a moot point.

Summary of Changes From the Proposed Rule

Below is a summary of the changes made to the legal descriptions for the cactus ferruginous pygmy-owl critical habitat designation. The maps included in the proposed rule accurately depicted the critical habitat proposed by the rule. Based on the comments we received, we discovered that several areas within the proposed critical habitat were not accurately described by the legal descriptions in the proposed rule, although the areas were accurately depicted on the maps. As discussed below, we are clarifying the legal descriptions in this final designation to conform to the area depicted by the maps, which remain unchanged.

Changes in the legal descriptions below are of three types: (1) The result of typographical errors discovered after publication of the proposed rule; (2) corrections in sectional descriptions resulting from the use of more up-to-date Public Land Survey System data obtained from the Arizona Land Resource Information System (ALRIS) to more closely reflect mapped information of the proposed rule; and (3) clarification of the description for Tucson Mountain County Park, the boundary of which was obtained from Pima County Public Works and is more up-to-date than that depicted on the BLM map cited in the proposed rule and which was available from ALRIS.

Unit 1:

T. 19 S., R. 7 E.
T. 19 S., R. 8 E.
T. 21 S., R. 7 E.

Unit 2:

T. 14 S., R. 11 E.
T. 14 S., R. 12 E.

Unit 5b:

T. 9 S., R. 14 E.

Unit 6:

T. 4 S., R. 14 E.
T. 6 S., R. 15 E.
T. 6 S., R. 16 E.
T. 8 S., R. 16 E.
T. 9 S., R. 18 E.
T. 11 S., R. 18 E.
T. 12 S., R. 19 E.

Unit 7:

T. 1 N., R. 9 E.

As a result of using ALRIS data for ownership, the acres summary in Table 1 also changed. The total acres increased by about 1% with the greatest change in Pinal County where BLM's total was reduced and the ''Other'' category picked up that reduction. This is largely due to acreage originally identified as BLM that was actually Bureau of Reclamation when the newer data sets were analyzed. The remaining acreage differences are attributed to the differing methods of determining acres. For the proposed rule, sections and ownership were roughly counted and totaled manually by visual inspection of the cited maps. Subsequently, digital information was obtained from ALRIS and Pima County, which was used to create the updated version of Table 1 (as well as the legal descriptions).

Finally, as mentioned previously, lands in Tribal grazing allotments are excluded from critical habitat. We determined that pygmy-owl conservation could be adequately ensured without designation of the approximately 240 acres.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude areas from critical habitat if such exclusion would result in the extinction of the species concerned.

Economic effects caused by listing the pygmy-owl as endangered and by other statutes are the baseline upon which critical habitat is imposed. The economic analysis must then examine the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of pygmy-owl critical habitat designation was prepared (McKenney *et al.* 1999) and made available for public review (April 15–May 15, 1999; 64 FR 18597). The final analysis, which reviewed and incorporated public comments, concluded that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the pygmy-owl. The only possible economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation regardless. Also, changes or mitigating measures that might increase the cost of the project would only be imposed as a result of critical habitat if the project adversely modifies or destroys that critical habitat. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no regulatory burden or additional costs would accrue because of critical habitat above and beyond that resulting from listing.

A copy of the economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, we submitted this action for review by the Office of Management and Budget. Because the economic analysis identified no economic benefits from excluding any of the proposed critical habitat areas, we made a determination to designate all proposed critical habitat units. No inconsistencies with other agencies' actions and/or effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, were identified in the economic analysis. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed in that document and in this final rule, designation of critical habitat will not restrict any actions beyond those already resulting from listing the pygmy-owl. We recognize that some towns, counties, and private entities are considered small entities in accordance with the Regulatory Flexibility Act, however, they also are not affected by the designation of critical habitat because no additional restrictions will result from this action.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we determined that designation of critical habitat will not cause—(a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis we determined that no effects would occur to small governments as a result of critical habitat designation.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not ''take'' private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists.

Federalism

This rule will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists, and in the economic analysis we determined that no economic impacts would result from critical habitat designation.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that EAs and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, we shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' Pygmy-owl critical habitat does not contain any Tribal lands nor lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary author of this notice is Mike Wrigley (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Pygmy-owl, cactus ferruginous'' under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
BIRDS							
*	*	*	*	*	*	*	*
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	U.S.A. (AZ, TX), Mexico.	AZ	E	600	§ 17.95 (b)	NA
*	*	*	*	*	*	*	*

3. Amend section 17.95(b) by adding critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)

1. Critical habitat units are depicted for Pima, Cochise, Pinal, and Maricopa counties, Arizona, on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal or the capacity to develop those habitat components. The primary constituent elements are found in areas that support, or have the potential to support, riparian forests, riverbottom woodlands, xeroriparian forests, and semidesert grassland, and the Arizona upland subdivision of Sonoran desertscrub. Within these vegetation communities, specific plant associations that are essential for the primary biological needs of the cactus ferruginous pygmy-owl include, but are not limited to, the following vegetation: cottonwood, willow, ash, mesquite, palo verde, ironwood, hackberry, saguaro cactus, and/or organ pipe cactus.

3. Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for the cactus ferruginous pygmy-owl issued under section 10(a) of the Act, nor Indian Tribal grazing allotments.

Unit 1. Pima County, Arizona. From BLM map Sells, Ariz. 1979, Atascosa Mts., Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 17 S., R. 8 E., secs. 1 to 3, E½ sec. 4, E½ sec. 9, secs. 10 to 16, 21 to 36; T. 17 S., R. 9 E., that portion of sec. 1 lying west of St. Hwy 286, secs. 2 to 10, those portions of secs. 11, 12, and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23 and 26 lying west of St. Hwy 286, secs. 27 to 34, that portion of sec. 35 lying west of St. Hwy 286; T. 18 S., R 7 E., sec. 1, those portions of secs. 2 and 11 lying east of Papago Indian Reservation Bdy, sec. 12, those portions of secs. 13, 14, 24, 25, and 36 lying east of Papago Indian Reservation Bdy; T. 18 S., R. 8 E., secs. 1 to 36; T. 18 S., R. 9 E., that portion of sec. 2 lying west of Hwy 286, secs. 3 to 10, those portions of secs. 11 and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23, 26, 27 and 28 lying

west and north of St. Hwy 286, secs. 29 to 31, those portions of secs. 32 and 33 lying west and north of St. Hwy 286; T. 19 S., R. 7 E., those portions of secs. 1, 12, 13, 14, and 23 lying east of Papago Indian Reservation Bdy, secs. 24 and 25, those portions of secs. 26 and 34 lying east of Papago Indian Reservation Bdy, secs. 35, 36; T. 19 S., R. 8 E., secs. 1 to 12, N½ sec. 13, secs. 14 to 21, W½ sec. 22, S½ sec. 26, S½ & NW¼ sec. 27, secs. 28 to 35; T. 19 S., R. 9 E., sec. 6; T. 20 S., R. 7 E., secs. 1, 2, those portions of secs. 3, 9, and 10 lying east of Papago Indian Reservation Bdy, secs. 11 to 15, those portions of secs. 16, 17, and 21 lying east of Papago Indian Reservation Bdy, secs. 22 to 27, those portions of secs. 28, 29, 32, and 33 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 20 S., R. 8 E., secs. 2 to 11, 14 to 23, 27 to 33; T. 21 S., R. 7 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of Papago Indian Reservation Bdy, secs. 9 to 16, those portions of secs. 17 and 20 lying east of Papago Indian Reservation Bdy, secs. 21 to 27, those portions of secs 28 and 29 lying east of Papago Indian Reservation Bdy, that portion of sec. 33 lying north of Papago Indian Reservation Bdy, secs. 34 to 36; T. 21 S., R. 8 E., secs. 4 to 9; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, 22 to 25; T. 22 S., R. 8 E., S½ SW, SW¼ SE¼ sec. 18, W½ & W½ E½ sec. 19, that portion of sec. 20 outside Buenos Aires NWR Bdy, secs. 29, 30.

Unit 2. Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 13 S., R. 9 E., secs. 31 to 36; T. 13 S., R. 10 E., secs. 31 to 36; T. 13 S., R. 12 E., those portions of secs. 31 to 34 lying within Tucson Mountain County Park; T. 14 S., R. 9 E., secs. 1 to 12; T. 14 S., R. 10 E., secs. 1 to 12; T. 14 S., R. 11 E., that portion of secs. 1 and 2 lying within the Tucson Mountain County Park, secs. 5 to 8, 10, 11, those portions of secs. 12 and 13 lying within Tucson Mountain County Park, secs. 14 and 15; T. 14 S., R. 12 E., those portions of secs. 1 to 25, lying within Tucson Mountain County Park; T. 14 S. R. 13 E., those portions of secs. 7, 18, 19, 28, 29, and 30 lying within Tucson Mountain County Park. (Note: Areas described for Tucson Mountain County Park do not match the Silver Bell Mts., Ariz. BLM map cited above. This description is based on more recent information obtained from Pima County Public Works.)

Unit 3. Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 12 E., those portions of secs. 8 and 9 lying south and west of Interstate 10, secs. 17, 20, and 29.

Unit 4. Pima and Pinal Counties, Arizona. From BLM maps Casa Grande, Ariz. 1979, Silver Bell Mts., Ariz. 1977.

Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 11 E., secs. 1 to 36; T. 10 S., R. 12 E., secs. 4 to 9, 16 to 21, 28 to 33; T. 11 S., R. 11 E., secs. 1 to 5, 9 to 15, secs. 23, 24; T. 11 S., R. 12 E., secs. 3 to 10, 14 to 30, N½ sec. 31, secs. 32 to 36; T. 11 S., R. 13 E., secs. 19, 28 to 33; T. 12 S., R. 12 E., secs. 1 to 4, those portions of secs. 8 and 9 lying north and east of Interstate 10, secs. 10 to 14, 23, 24, that portion of sec. 25 lying north of W. Cortaro Farms Road, that portion of sec. 26 lying north of W. Cortaro Farms Road and north and east of Interstate 10; T. 12 S., R. 13 E., secs. 4 to 9, 16 to 21, those portions of secs. 29 and 30 lying north of W. Cortaro Farms Road.

Unit 5a. Pinal County, Arizona. From BLM maps Mesa, Ariz. 1979, Casa Grande, Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 5 S., R. 11 E., secs. 1 to 36; T. 6 S., R. 11 E., secs. 1 to 36; T. 7 S., R. 11 E., secs. 1 to 36; T. 8 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 11 E., secs. 1 to 36.

Unit 5b. Pinal County, Arizona. From BLM maps Casa Grande, Ariz. 1979, Mammoth, Ariz. 1986.

Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 15 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 1 to 36; T. 9 S., R. 13 E., secs. 1 to 36; T. 9 S., R. 14 E., secs. 1 to 31; T. 9 S., R. 15 E., secs. 1 to 12, 14 to 21, 28 to 30.

Unit 6. Cochise, Pima, and Pinal Counties, Arizona. From BLM maps Mesa, Ariz. 1979, Globe, Ariz. 1986, Mammoth, Ariz. 1986, and Tucson, Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 4 S., R. 9 E., those portions of secs. 1, 12, 13, and 24 lying east of U.S. Hwy 89; T. 4 S., R. 10 E., secs. 1 to 5, that portion of sec. 6 lying east of U.S. Hwy 89, secs. 7 to 24; T. 4 S., R. 11 E., secs. 7 to 36; T. 4 S., R. 12 E., secs. 1 to 12; T. 4 S., R. 13 E., that portion of sec. 1 lying south and west of St. Hwy 177, secs. 2 to 12; T. 4 S., R. 14 E., those portions of secs. 5, 6, 7, 8, 16, and 17 lying south and west of St. Hwy 177, secs. 18, 20, those portions of secs. 21, 22, 26, and 27, lying south and west of St. Hwy 177, secs. 28, 29, 33, and 34, that portion of sec. 35 lying south and west of St. Hwy 177; T. 5 S., R. 14 E., those portions of secs. 1 and 2 lying south and west of St. Hwy 177, secs. 3, 11, 12; T. 5 S., R. 15 E., those portions of secs. 6, 7, 8, 9, and 10 lying south and west of St. Hwy 177, that portion of sec. 14 lying south and west of the Pinal and Gila Counties boundary (all within Pinal County), that portion of sec. 15 lying south of St. Hwy 177 and west of the Pinal and Gila Counties boundary (all within Pinal County), secs 16 to 22, that portion of sec. 23 lying south and west of the Pinal and Gila Counties boundary (all within Pinal County), that portion sec. 24 lying west of St. Hwy 77 and south of Pinal and Gila Counties boundary (all within Pinal County), that portion of sec. 25 lying south and west of St. Hwy 77 and north and east of San Manuel Railroad, those portions of secs. 26 and 36 lying north and east of San Manuel Railroad; 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T. 8 S., R. 16 E., that portion of sec. 1 lying south and west of St. Hwy 77, secs. 2 to 12, that portion of sec. 13 lying east of Camino Rio Road, secs. 15 to 22, 28 to 32; T. 8 S., R. 17 E., that portion of sec. 6 south and west of St. Hwy 77, that portion of section 7 west of St. Hwy 77 and west of River Road, that portion of sec. 17 lying south and west of River Road, that portion of sec. 18 south and west of River Road and north and east of a line defined by Camino Rio Road where it runs southeasterly from the west boundary of sec. 18 to its intersection with St. Hwy 77 then southeasterly along St. Hwy 77 to its intersection with Old State Hwy 77 then along Old State Hwy 77 to its intersection with the south boundary of sec. 18, that portion of sec. 19 lying east of Old State Highway 77, those portions of secs. 20, 28, and 29 lying south and west of River Road, that portion of sec. 30 lying east of Old State Hwy 77 and St. Hwy 77, sec. 32, that portion of sec. 33 lying west of River Road; T. 9 S., R. 16 E., secs. 5 to 8; T. 9 S., R. 17 E., those portions of secs. 3 and 4 lying west of River Road, sec. 9, those portions of secs. 10, 14, and 15 lying west of River Road, NE¼ sec. 22, those portions of secs. 23, 24, and 25 west of River Road; T. 9 S., R. 18 E., those portions of secs. 30, 31 and 32 west of River Road; T. 10 S., R. 18 E., those portions of secs. 5, 6, 7, and 8 lying north and east of Redington Road, sec. 9, those portions of secs. 16, 17, and 21 lying north and east of Redington Road, secs. 22 and 27, those portions of secs. 28 and 33 lying east of Redington Road, sec. 34; T. 11 S., R. 18 E., sec. 2, those portions of secs. 3 and 10 lying east of Redington Road, secs. 11 and 14, those portions of secs. 15 and 22 lying east of Redington Road, secs. 23 and 26, that portion of sec. 27 lying east of Redington Road, that portion of sec. 34 lying east of Redington Road and west of Cascabel Road, that portion of sec. 35 lying west of Cascabel Road; T. 12 S., R. 18 E., that portion of sec. 2 west of Cascabel Road, that portion of sec. 3 lying east of Redington Road, those portions of secs. 11, 12, and 13 lying west of Cascabel Road; T. 12 S., R. 19 E., those portions of secs. 18, 19, 29, and 30 lying west of Cascabel Road, sec. 31, that portion of sec. 32 and 33 lying west of Cascabel Road; T. 13 S., R. 19 E., that portion of sec. 4 lying west of Cascabel Road, sec. 5, those portions of secs. 9, 10, and 15 lying west of Cascabel Road.

Unit 7. Maricopa and Pinal Counties, Arizona. From BLM maps Theodore Roosevelt Lake, Ariz. 1981 and Mesa, Ariz. 1979.

Gila and Salt Principal Meridian, Arizona: T. 3 N., R. 7 E., that portion of sec. 33 lying easterly of Salt River Indian Reservation Bdy, secs. 34 to 36; T. 3 N., R. 8 E., secs. 31 to 33; T. 2 N., R. 7 E., secs. 1 to 3, those portions of secs. 4, 5, 6 and 7 lying south and east of

Salt River Indian Reservation Bdy, secs. 8 to 17, that portion of sec. 18 lying south and east Salt River Indian Reservation Bdy, secs. 19 to 25, E ½ sec. 26, E ½ sec. 35, sec. 36; T. 2 N., R. 8 E., secs. 4 to 8, 18, 19, 25 to 36; T. 2 N., R. 9 E., secs. 30, 31; T. 1 N., R. 9 E., secs. 6, 7, 18 to 21, 27 to 30, 34 to 36; T. 1 N., R. 10 E., secs. 31, 32; T. 1 S., R. 9 E., secs. 1 to 3, 10 to 15, 22 to 26, those portions of secs. 27, 35 and 36 lying north and east of U.S. Hwy 60/89; T. 1 S., R. 10 E., secs. 5 to 8, 17 to 20, 29 to 32; T. 2 S., R. 9 E., that portion of sec 1 lying north and east of U.S. Hwy 60/89; T. 2 S., R. 10 E., secs. 1 to 5, those portions of secs. 6, 7 and 8 lying north and east of U.S. Hwy 60/89, secs. 9 to 16, that portion of sec. 17 lying north and east of U.S. Hwy 60/89 and south and east of U.S. Hwy 89, that portion of sec. 20 lying east of U.S. Hwy 89, secs. 21 to 28, those portions of secs. 29 and 32 lying east of U.S. Hwy 89, secs. 33 to 36: T. 3 S., R. 10 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of U.S. Hwy 89, secs. 9 to 16, those portions of secs. 17, 18, and 19 lying east of U.S. Hwy 89, secs. 20 to 29, those portions of secs. 30 and 31 lying east of U.S. Hwy 89, secs. 32 to 36.

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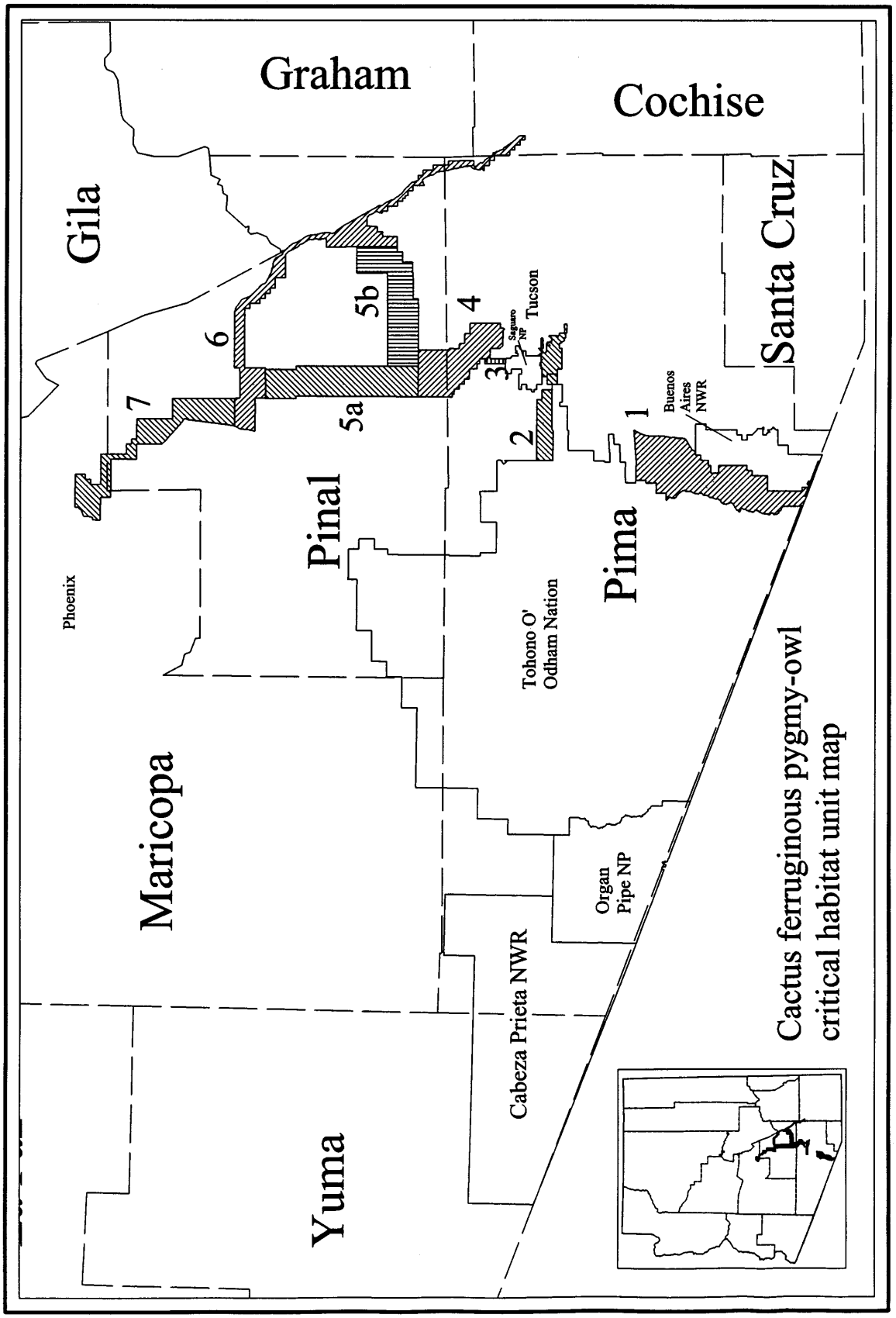
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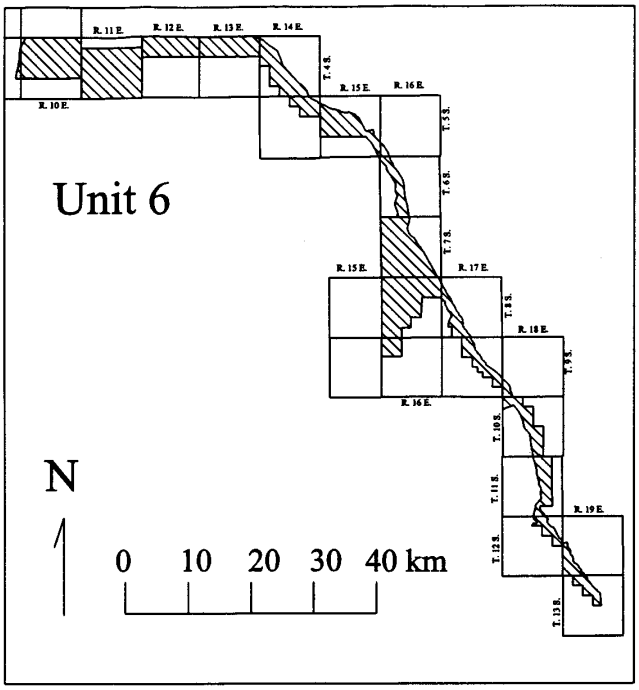
Cactus ferruginous pygmy-owl critical habitat unit map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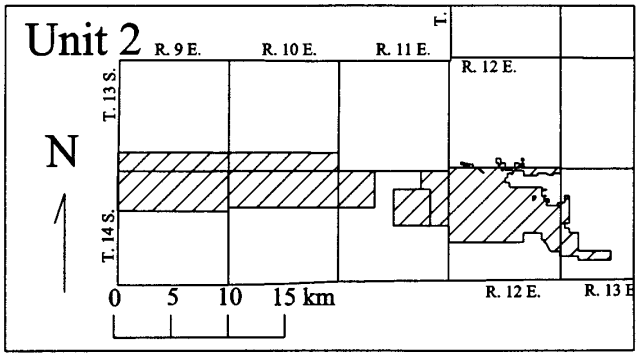
Unit 2
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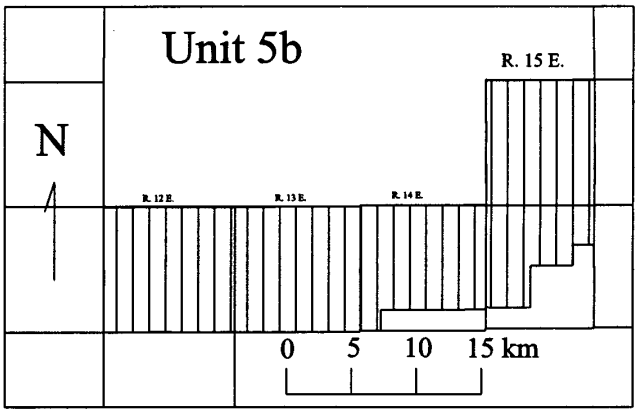
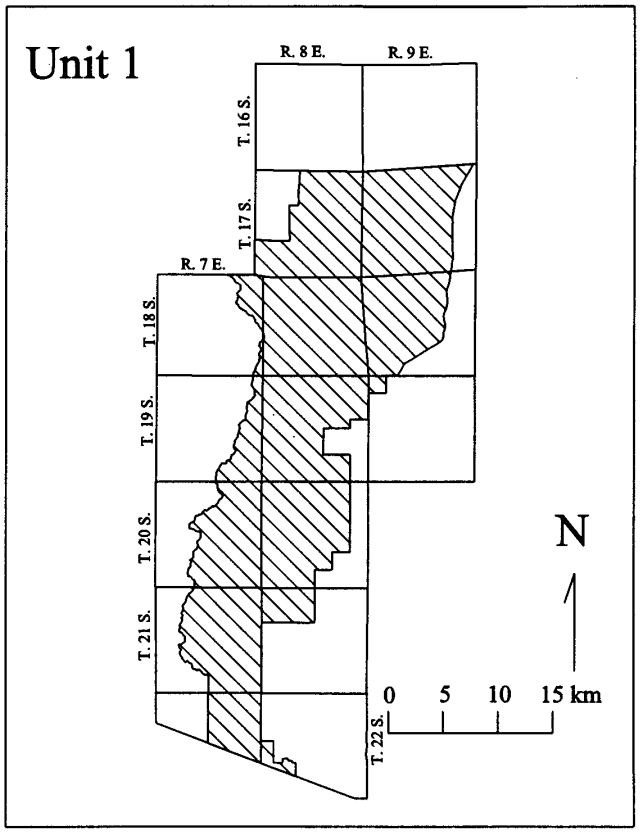
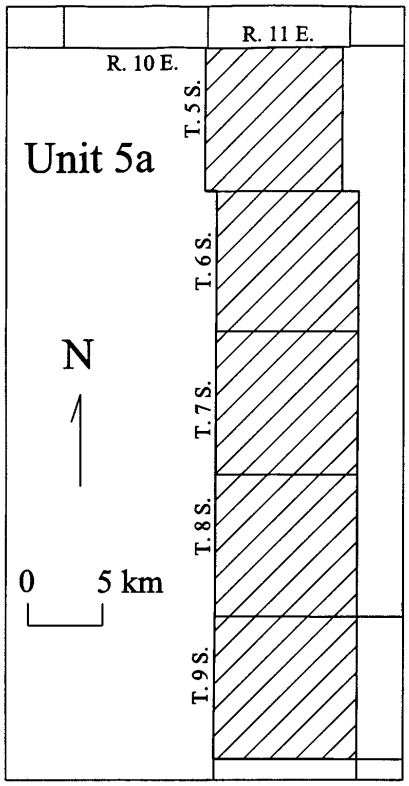
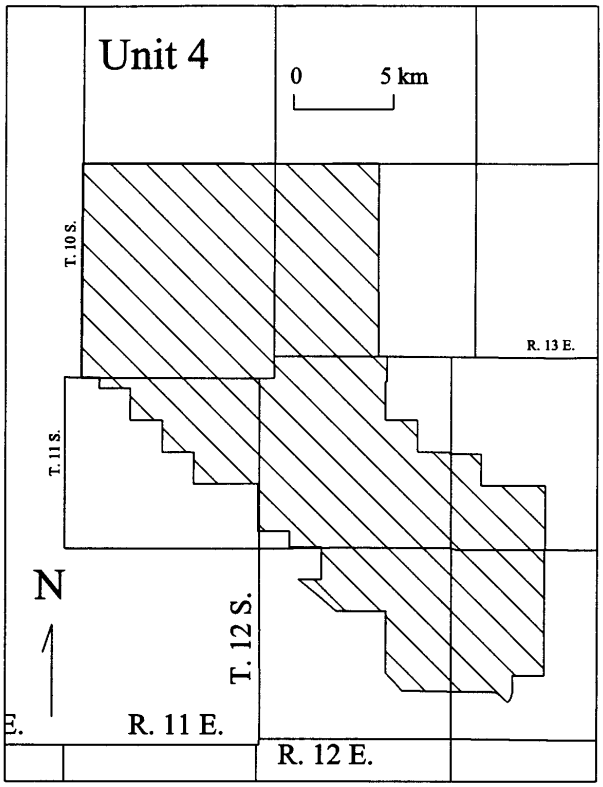
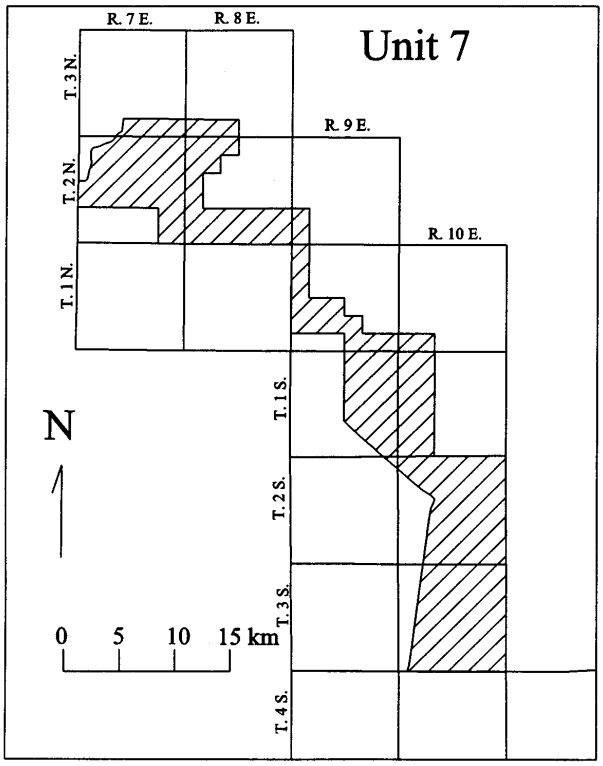
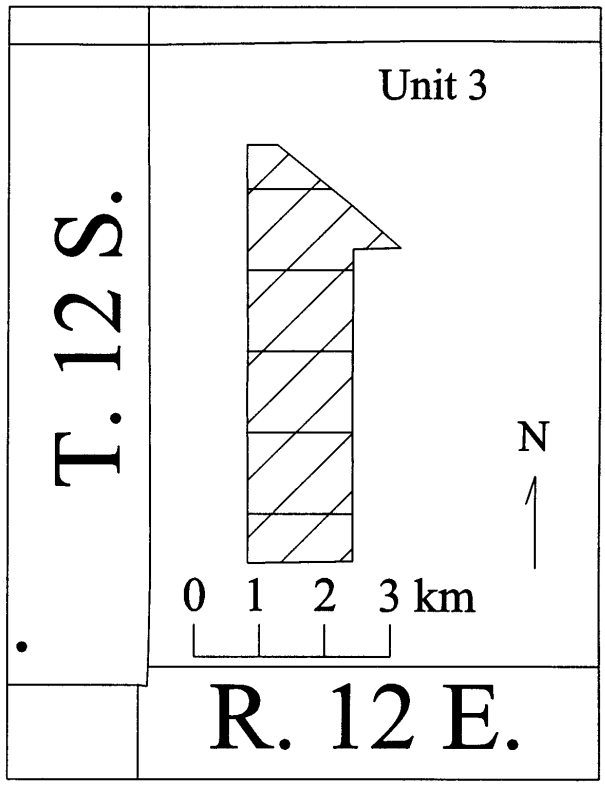

Unit 5b
R. 15 E.
N
R. 12 E.
R. 13 E.
R. 14 E.
0 5 10 15 km


Unit 1
R. 8 E.
R. 9 E.
T. 16 S.
T. 17 S.
R. 7 E.
T. 18 S.
T. 19 S.
T. 20 S.
T. 21 S.
T. 22 S.
N
0 5 10 15 km









Dated: June 30, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–17404 Filed 7–6–99; 1:25 pm]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF37

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel). Designated habitat includes a total of 83.2 kilometers (km) (51.7 miles (mi)) of streams or rivers in Cochise and Santa Cruz counties, Arizona. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

Lilaeopsis schaffneriana var. *recurva* (referred to as *Lilaeopsis* in this proposed rule), the Huachuca water umbel, is a plant found in cienegas (desert marshes), rivers, streams, and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as *Lilaeopsis* (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982).

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historical times. *Lilaeopsis* occupies small portions of these rare habitats.

Lilaeopsis is an herbaceous, semiaquatic to occasionally fully aquatic, perennial plant with slender, erect leaves that grow from creeping rhizomes (root-like stems). The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 inches (in)) in diameter and often 3–5 centimeters (cm) (1–2 in) tall, but can reach up to 20 cm (8 in) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes; the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants which then may reroot at different sites along streams.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

Previous Federal Action

We included *Lilaeopsis schaffneriana* ssp. *recurva,* then under the name *L. recurva,* as a category 2 candidate in our November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526), plant notices of review. Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. In our February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices, we included *Lilaeopsis* as a category 1 candidate. Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On June 3, 1993, we received a petition, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993) to list *Lilaeopsis* and two other species as endangered species pursuant to the Act. On December 14, 1993, we published a notice of 90-day finding that the petition presented substantial information indicating that listing of *Lilaeopsis* may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

On April 3, 1995, we published a proposal (60 FR 16836) to list *Lilaeopsis* and two other species as endangered, and again requested public comments and biological data on their status. After consideration of comments and information received during the comment period, we listed *Lilaeopsis* as endangered on January 6, 1997.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened. At the time of listing, we determined that any potential benefits of critical habitat beyond that of listing, when weighed against the negative impacts of disclosing site-specific localities, did not yield an overall benefit to the species, and, therefore, that designation of critical habitat was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Department of Interior for failure to designate critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) and *Lilaeopsis (Southwest*

Center for Biological Diversity v. *Babbitt*, CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating that ''There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available.''

On November 25, 1998, in response to the Plaintiff's motion to clarify his initial order, Judge Marquez further ordered ''that within 30 days of the date of this Order, the Secretary shall issue the proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.'' A rule proposing 83.9 kilometers (km) (52.1 miles (mi)) of streams and rivers in Cochise and Santa Cruz counties, Arizona, as critical habitat for Lilaeopsis was published December 30, 1998.

The processing of the December 30, 1998, proposed rule and this final rule does not conform with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of *Lilaeopsis* include a riparian plant community that is fairly stable over time and not dominated by nonnative plant species, a stream channel that is relatively stable but subject to periodic flooding, refugial sites (sites safe from catastrophic flooding), and a substrate (soil) that is permanently wet or nearly so, for growth and reproduction of the plant.

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, *Lilaeopsis* occurs in microsites (small isolated sites) where competition among different plant species is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800s. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

Lilaeopsis can occur in backwaters and side channels of streams and rivers, and in nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991).

In rivers and streams, the expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of ''refugia'' where the species can escape the effects of scouring floods, a watershed that has an unaltered flow regime, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994, and the species had still not recolonized that area as of May 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

The density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500 square-meter (sq-m) (5,385 square-foot (sq-ft)) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 sq-m (11–22 sq-ft). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger Huachuca water umbel populations, where in 1995 it occupied about 64 percent of a 1,420-m (4,660-ft) reach (Falk 1998).

While the extent of occupied habitat can be estimated, the number of individuals in each population is difficult to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A ''population'' of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino and Leslie Canyon National Wildlife Refuges, Arizona, appears to be successful (Warren 1991; Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1999). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other wetlands at San Bernardino Refuge. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, Service, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as *Typha* sp. will out-compete *Lilaeopsis*. A recent introduction to Leslie Canyon Refuge is successful and the plant appears to be expanding its distribution there (K. Cobble, pers. comm. 1999).

Lilaeopsis has been documented from 26 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (K. Cobble, pers. comm. 1999; Haas and Frye 1997; Saucedo 1990; Warren *et al.* 1989; Warren *et al.* 1991; Warren and Reichenbacher 1991). The plant has been extirpated from six of the sites. The 20 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM)

Tucson Field Office. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, BLM, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly existing along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130-km (80-mi) reach that flowed perennially from the United States/Mexico border northward to Tubac area and intermittently from Tubac north to the Tucson area (Davis 1986).

Davis (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: ''* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *'' This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *et al.* 1991).

Lilaeopsis remains in small areas (generally less than 1 sq-m (10.8 sq-ft)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds, including Leslie Canyon. A population at House Pond on private land near Black Draw was thought to be extirpated, but was recently rediscovered there (K. Cobble, pers. comm. 1999).

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). A population in the Rio San Bernardino in Sonora was recently extirpated (Gori *et al.* 1990), but another population was found in 1997 on Cajon Bonito near its confluence with Black Draw in Sonora (K. Cobble, pers. comm. 1999). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. ''Jeopardize the continued existence'' (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical (50 CFR § 402.02).

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain habitat components necessary for the primary biological needs of a species but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act states that, ''except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.'' All areas containing the primary constituent elements are not necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat

boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR § 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lilaeopsis* include, but are not limited to, the habitat components that provide:

(1) Sufficient perennial base flows to provide a permanently or nearly permanently wetted substrate for growth and reproduction of *Lilaeopsis;*

(2) A stream channel that is relatively stable, but subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion;

(3) A riparian plant community that is relatively stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and

(4) In streams and rivers, refugial sites in each watershed and in each reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

We selected critical habitat areas to provide for the conservation of *Lilaeopsis* throughout the remaining portion of its geographic range in the United States. At least one segment of critical habitat is designated in each watershed containing the species, with the exception of the Rio Yaqui watershed where the plants are found on the San Bernardino National Wildlife Refuge. That population is secure under current management and, therefore, does not require special management considerations or protection.

Critical Habitat Designation

The critical habitat areas described below, combined with other habitat either known or suspected to contain some of the primary constituent elements but not in need of special management, constitute our best assessment at this time of the areas needed for the species' conservation. However, the Arizona Plant Recovery Team will be providing guidance on recovery planning for this species and may provide additional guidance regarding the significance of areas designated as critical habitat or the need to designate other areas. Upon the team's completion of recovery planning guidance, we will evaluate the recommendations and reexamine if and where critical habitat is appropriate.

Critical habitat designated for *Lilaeopsis* includes areas that currently sustain the species and areas that do not currently sustain the species but offer recovery habitat. The species is already extirpated from a significant portion of its historical range. Seven disjunct areas are designated as critical habitat; all proposed areas are in Santa Cruz and Cochise counties, Arizona, and include stream courses and adjacent areas out to the beginning of upland vegetation.

The following general areas are designated as critical habitat (see legal descriptions for exact critical habitat boundaries): approximately 2.0 km (1.25 mi) of Sonoita Creek southwest of Sonoita; approximately 4.4 km (2.7 mi) of the Santa Cruz River on both sides of Forest Road 61, plus approximately 3 km (1.9 mi) of an unnamed tributary to the east of the river; approximately 5.4 km (3.4 mi) of Scotia Canyon upstream from near Forest Road 48; approximately 1.1 km (0.7 mi) of Sunnyside Canyon near Forest Road 117 in the Huachuca Mountains; approximately 6.1 km (3.8 mi) of Garden Canyon near its confluence with Sawmill Canyon; approximately 1.6 km (1.0 mi) of Lone Mountain Canyon and approximately 1.6 km (1.0 mi) of Rattlesnake Canyon and 1.0 km (0.6 mi) of an unnamed canyon, both of which are tributaries to Lone Mountain Canyon; approximately 1.6 km (1.0 mi) of Bear Canyon; an approximate 0.9-km (0.6-mi) reach of an unnamed tributary to Bear Canyon; and approximately 54.2 km (33.7 mi) of the San Pedro River from the perennial flows reach north of Fairbank (Arizona Department of Water Resources 1991) to 200 meters (.13 mi) south of Hereford, San Pedro Riparian National Conservation Area.

Although the majority of lands designated as critical habitat is under Federal administration and management, some riparian systems on private land are being designated. The Sonoita Creek segment and the San Rafael Valley segment within the Santa Cruz River drainage are privately owned. The upper portion of Scotia Canyon is privately owned, but is expected to soon be acquired through land exchange by the Coronado National Forest. Other sites in the Huachuca Mountains (lower Scotia Canyon, Sunnyside, Bear, and Lone Mountain canyons, and tributaries of the latter two canyons) are managed by the Coronado National Forest. The San Pedro Riparian National Conservation Area is managed by the BLM. The Garden Canyon segment is managed by the Fort Huachuca Military Reservation.

Several areas where *Lilaeopsis* occurs are not designated as critical habitat. We recognize the importance of all lands occupied or potentially occupied by *Lilaeopsis*, but, as discussed below, not all such areas were designated because some did not meet the designation criteria (i.e., were too small to support a stable *Lilaeopsis* population over time, and/or were already protected). Also, areas outside the United States are not considered for critical habitat designation (50 CFR 424.12(h)). Several sites were considered small and not capable of supporting large stable populations, including Turkey Creek in the Canelo Hills, Sawmill Spring, Sycamore Spring, Mud Spring, and Freeman Springs.

We believe these small, isolated sites are important, but may not be essential to the conservation of the species, and in the case of Sawmill Spring and Freeman Spring, may not require special management considerations or protection above that currently provided. Freeman Spring is fenced to prevent livestock grazing. Sawmill Spring is an isolated site near the western boundary of Fort Huachuca at which the only significant threats are a trail to the site and wildfire. Recreational use along the trail does not appear to be adversely affecting the species, and Fort Huachuca has committed to various measures to lessen the threat of wildfire.

Also not designated are portions of Bear Canyon above and below the critical habitat reach and several isolated populations in the Bear and Lone Mountain canyons complex. We believe the best habitat in this area is included in the designated reaches of the two canyons and their tributaries. Other reaches are intermittent with limited habitat for *Lilaeopsis*, or are

small, relatively isolated sites. Also, designation of the critical habitat reach provides some protection to at least the downstream reach of Bear Canyon due to conservation of watershed values.

The 0.7-km (0.4-mi) reach of Joaquin Canyon, proposed as Unit 7, is also not designated. This reach is currently administered by the Coronado National Forest, but is expected to be exchanged into private ownership in the near future. During the open comment period, we met with both the Coronado National Forest and prospective new landowners. Through these discussions we learned that the future owners plan to continue current grazing practices, but no other uses of the property are anticipated. Further, the effects of grazing are moderated at this site because the stream channel is largely bedrock and not easily subject to structural damage. Thus, we do not consider this area to be in need of special management consideration or protection. In summary, because of the small size of the Joaquin Canyon habitat and the low degree of threats to the area, we did not designate this area as critical habitat, because it is neither essential to the conservation of the species nor in need of special management or protection. The area proposed as Unit 8 now becomes Unit 7.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conferencing on *Lilaeopsis* critical habitat was requested twice, including once by the Department of the Army, Fort Huachuca, in regard to military activities, and once by the Coronado National Forest on their forest-wide grazing program. These conferences are not yet complete. With designation of critical habitat, these conferences are now section 7 consultations.

Activities on Federal lands that may affect *Lilaeopsis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, will also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lilaeopsis* is appreciably diminished. We note that such activities will also likely jeopardize the continued existence of the species. Such activities may include but are not limited to:

(1) Activities such as damming, water diversion, channelization, excess groundwater pumping, or other actions that appreciably decrease base flow and appreciably reduce the wetted surface area of rivers, streams, cienegas, or springs;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes needed to maintain natural, dynamic riparian communities. Such activities adverse to *Lilaeopsis* critical habitat could include, but are not limited to: vegetation manipulation such as chaining or harvesting timber; maintaining an unnatural fire regime either through fire suppression, or too-frequent or poorly-timed prescribed fires; mining; military maneuvers, including bombing and tank operations; residential and commercial development; road construction; and overgrazing that reduces fire frequency or otherwise degrades watersheds;

(3) Activities that appreciably degrade or destroy native riparian communities, including but not limited to livestock overgrazing, clearing, cutting of live trees, introducing or encouraging the spread of nonnative species, and heavy recreational use; and

(4) Activities that appreciably alter stream channel morphology such as sand and gravel mining, road construction, channelization, impoundment, overgrazing, watershed disturbances, off-road vehicle use, heavy or poorly-planned recreational use, and other uses.

Designation of critical habitat could affect the following agencies and/or actions including, but not limited to, managing recreation, road construction, livestock grazing, granting rights-of-way, timber harvesting, and other actions funded, authorized, or carried out by the Forest Service or BLM. Permitting of some military activities on Fort Huachuca may be affected by designation. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process. These activities are already subject to section 7 consultation because of the listing of *Lilaeopsis*.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Summary of Comments and Recommendations

In the December 30, 1998, proposed rule to designate critical habitat, we requested all interested parties to submit comments or information that might bear on the listing or designation of critical habitat for *Lilaeopsis*. The first comment period closed March 1, 1999. We reopened the comment period from April 15 to May 15, 1999, to once again solicit comments on the proposed

rule and to accept comments on the draft economic analysis. Comments received from March 2 to April 14, 1999, were entered into the administrative record during the second comment period. All appropriate State agencies, Federal agencies, County governments, scientific organizations, and other interested parties were contacted and invited to comment. We published newspaper notices inviting public comment in the following newspapers in Arizona: Arizona Republic, Tucson Citizen, Arizona Daily Star, Sierra Vista Herald, Green Valley News and Sun, The Bulletin, The Tombstone Tumbleweed, and Nogales International. The inclusive dates of publication were January 4 to 12, 1999, for the initial comment period; January 26 to February 4, 1999, to advertise the public hearings; and April 21 to 29, 1999, for the second comment period.

We held three public hearings on the proposed rule, at Coolidge (February 10, 1999), Sierra Vista (February 11, 1999), and Tucson, Arizona (February 12, 1999). The hearings were also held to solicit comments on the proposed rule to designate critical habitat for the cactus ferruginous pygmy-owl, *Glaucidium brasilianum cactorum* (63 FR 71820). A notice of hearings and locations was published in the **Federal Register** on January 26, 1999 (64 FR 3923). A total of 89 people attended the public hearings, including 10 in Coolidge, 28 in Sierra Vista, and 51 in Tucson. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We contacted three experts on the species that agreed to peer review the proposed critical habitat designation. One of those peer reviewers submitted comments. He concluded that ''the habitat sites designated, to the best of my knowledge, seem reasonable enough to guarantee its (*Lilaeopsis*') survival—even though I would prefer additional ones.''

A total of 8 oral and 41 written comments were received during the two comment periods. Of the 8 oral comments, 3 supported critical habitat designation, 4 were opposed to designation, and 1 provided additional information but did not support or oppose the proposal. Of the written comments, 22 supported designation, 9 were opposed to it, and 10 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 5 Federal agencies, 2 State agencies, 4 local governments, and 38 private organizations, companies, or individuals.

We reviewed all comments received for substantive issues and new data regarding critical habitat and *Lilaeopsis*. Comments of a similar nature are grouped into a number of general issues. Fifteen general issues were identified relating specifically to critical habitat. These are addressed in the following summary.

Issue 1: The Service did not allow for an appropriate level of local government involvement in the designation of critical habitat. Several commenters said that cities and counties should have greater say in critical habitat designations, while one commenter would have us not consider comments from local governments.

Service Response: The Act requires that we ''give actual notice of the proposed regulation (including the complete text of the regulation) to* * *each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each jurisdiction'' (section 4(b)(5)(A)(ii)). The comments of local governments are then entered into the administrative record for the proposed regulation and are considered when developing proposed or final rules. However, we do not weight comments from a local government any more or less than other comments. Instead, we are required to base our decision on the ''best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat'' (section 4(b)(2) of the Act). The proposed rule was sent to Cochise, Santa Cruz, and Pima county offices, the Southeastern Arizona Council of Governments, and the cities/towns of Patagonia, Benson, and Sierra Vista. Of these local governments, comments were received from the City of Benson. Those comments were considered in development of this final rule.

Issue 2: Lilaeopsis receives an adequate level of protection on the San Pedro River and at Fort Huachuca, and therefore critical habitat should not be designated in these areas.

Service Response: The San Pedro River critical habitat unit is administered by the BLM, while designated critical habitat on Fort Huachuca (Garden Canyon) is administered by the Department of Defense. Because of the protection afforded *Lilaeopsis* through section 7 consultations on these Federal lands resulted from listing of the species, there is little additional benefit of critical habitat designation in occupied habitats because *Lilaeopsis* occurs patchily in both Garden Canyon and the San Pedro River, and a project that affects one portion of a stream course will affect downstream and perhaps upstream reaches as well.

Given the above, we fundamentally agree that critical habitat designation provides no additional protection beyond that provided through listing the species under the Act. However, given the outcome of litigation surrounding this and other critical habitat designations, we felt that the prudent course would be to designate critical habitat in areas where Federal actions are likely to affect that habitat.

Issue 3: Most of the areas proposed for critical habitat do not have constituent elements and thus should not be designated. Occupied habitat is adequate to ensure conservation of the species, thus unoccupied sites should not be designated. In particular, one commenter said that the San Pedro River channel is too unstable to support *Lilaeopsis*, no refugia exist where the species can escape the effects of flooding, and it is dominated by nonnative species, such as *Typha* spp. (cattail). This commenter also said that the San Pedro River should not be designated critical habitat because flows could be depleted or halted due to diversions or pumping in the upper watershed in Mexico.

Service Response: Although *Lilaeopsis* occurs within all of the critical habitat units, the extent of occupied habitat and areas where all of the constituent elements are found are somewhat dynamic and change within these systems depending on floods, drought, changes in channel morphology, and other factors. Some portions of stream segments designated as critical habitat have very little potential to support *Lilaeopsis*, such as the majority of the upper portion of Lone Mountain Canyon, but may support the species and constituent elements in wet years.

Nevertheless, these segments are hydrologically connected to, and part of, the drainages that support the most important populations of *Lilaeopsis*. In the case of upper Lone Mountain Canyon, populations of *Lilaeopsis* occur both upstream and downstream of this reach; thus not only is this segment likely ephemeral habitat which affects downstream populations hydrologically, it is also a link that can allow for flow of individuals and genetic material among populations. Such flow is essential for genetic diversity and for recolonization if populations are extirpated (Shafer 1990).

In regard to the San Pedro River, the reach designated as critical habitat supports six populations or clusters of

populations that are distributed from the southern to northern boundaries of the reach. This reach is broadly defined by the Arizona Department of Water Resources (1991) as perennial throughout, although in most years flow is greatly reduced and many places are dry immediately before the summer rains begin in July.

The commenter's suggestion that the San Pedro River channel is too unstable; no refugia exist for persistence during floods; and nonnatives such as *Typha* are common is belied by the fact that six populations exist within the critical habitat reach, despite changes in channel morphology and periodic flooding. Also, *Typha* is a native emergent plant, although other non-natives, particularly *Rorippa nasturtium-aquaticum*, are common in the San Pedro River. Habitat suitability varies within the San Pedro critical habitat unit, but we have no reason to believe that any significant portion of it is unsuitable. With the removal of grazing and off-road vehicles since 1989, the channel has apparently become more stable, emergent and riparian vegetation has increased in the river channel, and *Lilaeopsis* was rediscovered on the river. The recent introduction of beavers to the system should further hasten the recovery of cienega conditions and *Lilaeopsis* habitat. Groundwater pumping or diversions, or other changes in the watershed of the San Pedro River in Mexico or Arizona may affect the ability of the river to support *Lilaeopsis* and to provide constituent elements.

Issue 4: The economic effects of designating critical habitat greatly outweigh any benefits of designating critical habitat. The designation will have harmful impacts on the quality of life, education, and economic stability. In particular, designation of critical habitat on the San Pedro River would change groundwater pumping, which could result in closure of Fort Huachuca and subsequent devastating effects to the economy of Sierra Vista.

Service Response: Areas proposed as critical habitat may be excluded from designation if ''the benefits of such exclusion outweigh the benefits of specifying the areas as part of the critical habitat,'' unless it is determined that ''failure to designate such area as critical habitat will result in extinction of the species'' (section 4(b)(2) of the Act). As discussed in our response to issue 2, additional conservation benefits of designation for most species, are few if any.

The economic analysis (McKenney *et al.* 1999), based on our view that no restrictions beyond those resulting from listing the species will result from critical habitat designation, found that the critical habitat designation would have no economic effect on activities. Based on our experience with consultation on *Lilaeopsis* as well as completed and ongoing conferences on the species' proposed critical habitat, we do not foresee any action that would result in a finding of destruction or adverse modification of proposed critical habitat that would not also result in a finding of jeopardy to the species. As a result, no effects to the economy of Sierra Vista or other cities or towns are anticipated from designation of critical habitat, and therefore the benefits of excluding these areas do not outweigh the benefits of including them as critical habitat.

Issue 5: Designation of critical habitat has significant takings implications; thus a takings implications assessment, as required by Executive Order 12630, must be conducted. Also, a Regulatory Flexibility Analysis should have been done.

Service Response: Please see the discussions under the ''Required Determinations'' section of this final rule that discusses takings implications assessments.

Issue 6: San Bernardino National Wildlife Refuge should be designated critical habitat instead of the San Pedro River.

Service Response: In determining what areas are critical habitat, we consider physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection (50 CFR 424.14(b)). San Bernardino and Leslie Canyon National Wildlife Refuges, as well as the upper San Pedro River, provide important habitat for *Lilaeopsis*. However, as National Wildlife Refuges with mandates to conserve and protect rare species, special management and protection are already in place. Thus, no additional layer of protection is needed. However, as discussed herein and in the final listing rule (62 FR 665), *Lilaeopsis* and its habitat are threatened by groundwater overdraft on the upper San Pedro, which may require special management considerations or protection. As a result, critical habitat was designated on the upper San Pedro River but not at San Bernardino or Leslie Canyon National Wildlife Refuges.

Issue 7: Critical habitat designation will direct collectors of rare plants and recreationists to these important habitats, resulting in increased collection of *Lilaeopsis* and habitat disturbance.

Service Response: Designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species (50 CFR 424.19). As discussed in the proposed rule, we are concerned that publishing maps of *Lilaeopsis* critical habitat could facilitate collection or other adverse effects. However, *Lilaeopsis* is a small, grass-like plant with inconspicuous flowers that is unlikely to be highly prized by plant collectors. Collection has not been identified as a threat.

Publishing the localities could facilitate visits by botanists or recreationists to these sites, which could result in trampling of plants or banklines. However, we expect that these visits will be few in number and very little disturbance will result from such visits.

Issue 8: All *Lilaeopsis* localities should have been designated as critical habitat, or the Service should provide a rationale for not designating sites. One commenter suggested that more critical habitat should be designated in Bear Canyon of Unit 6.

Service Response: In determining what areas are critical habitat, we consider areas and constituent elements that are essential to the conservation of the species and that may require special protection or management considerations (50 CFR 424.19(b)). Thus, not all areas occupied or potentially occupied by a species are appropriate for designation. Our rationale for not designating all *Lilaeopsis* localities as critical habitat is discussed in the section of this rule entitled ''Critical Habitat Designation.''

Issue 9: Designation of critical habitat should be delayed until better information becomes available on the species.

Service Response: Critical habitat designation can be found to be not determinable if information is insufficient to perform the required analyses of the impacts of the designation, or the biological needs of the species are not known well enough to permit identification of an area as critical habitat. Although additional work on this species is needed, the biological needs of the species is far from unknown and an analysis of economic impacts was completed (McKenney *et al.* 1999). Surveys and ecological studies of *Lilaeopsis* (Affolter 1985, Falk 1998, Falk and Warren 1994, Gori *et al.* 1990, Haas and Frye 1997, Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991) provide sufficient

information upon which to base a critical habitat determination. Critical habitat may be revised if new information becomes available suggesting such revision is needed (50 CFR 424.12(g)).

On November 25, 1998, Judge Marquez ordered ''that within 30 days of the date of this Order, the Secretary shall issue the proposed rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the proposed rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.''

Issue 10: The maps are inadequate for landowners to determine what areas were proposed as critical habitat. The meaning of ''adjacent areas out to the beginning of the upland vegetation'' is unclear.

Service Response: The maps are intended to be a general guide to where critical habitat is located. To determine exactly where critical habitat begins and ends along the designated canyons and stream reaches, readers should refer to the legal descriptions in the section entitled ''Critical Habitat—Plants.'' In regard to the precise location of critical habitat within canyons or stream reaches, we decided that an ecological description would be more appropriate than a strictly legal description. The floodplain vegetation community defines the area in which constituent elements will be found more precisely than legal descriptions. *Lilaeopsis* habitat and constituent elements are expected to change within those floodplains over time as the watercourse changes direction, creates new channels, etc. Movement within the floodplain is more likely to occur in a broad floodplain such as the San Pedro River, as compared to a narrow canyon, such as Rattlesnake Canyon in Unit 6. Although the habitat and constituent elements may move within a floodplain, they will always be within that floodplain and its associated zone of riparian and wetland vegetation, thus we defined the boundaries of critical habitat by vegetation communities. The boundary between riparian/wetland communities and adjacent uplands are typically quite clear in the arid woodlands and semi-desert grasslands in which *Lilaeopsis* habitat occurs and should be easy to identify on the ground.

Issue 11: Further survey work is needed in Unit 6 to determine where critical habitat should be designated.

Service Response: We reevaluated survey data and reports, particularly Gori *et al.* (1990), Haas and Frye (1997), and Warren *et al.* (1991); and in March, 1999, we made two field trips to the area to investigate the distribution of *Lilaeopsis* and assess habitat suitability. These field trips focused on Lone Mountain Canyon and its tributaries. Our review of existing literature and investigations in Lone Mountain Canyon confirmed that the stream reaches proposed as critical habitat met the regulatory criteria for critical habitat. *Lilaeopsis* was found by us and previous investigators in Lone Mountain Canyon and its two tributaries, but there are long stretches of these canyons that are typically dry, and the species was not located. The species may occur in these reaches during wet periods, but as discussed in our response to Issue 3, not only are these reaches likely ephemeral habitat during wet cycles, but they also affect downstream populations hydrologically, and are links that can allow for flow of individuals and genetic material among populations.

Issue 12: There is no need to designate critical habitat on the fringe of *Lilaeopsis'* range, where few areas contain constituent elements.

Service Response: The commenter states that the range of *Lilaeopsis* extends to central and northern Mexico and northwestern South America. This is the range of the entire species, but the listed entity, *Lilaeopsis schaffneriana* ssp. *recurva*, is only known from 26 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico. These are not ''fringe'' localities; they represent the only places where this taxon is found.

Issue 13: The Service failed to notify or request comments from the State of Arizona, Mexico, and South American countries where *Lilaeopsis* occurs, as required by the Act.

Service Response: As discussed in our response to Issue 12, *Lilaeopsis schaffneriana* ssp. *recurva* does not occur in South America, therefore we did not solicit comments from South American countries. Pursuant to 50 CFR 424.16 (c)(1)(iv), we are required to give notice to foreign countries in which the species occurs only if the proposed regulation is to list, delist, or reclassify the species. Because this is not an action to list, delist, or reclassify a species, this action does not apply to Mexico, and we are not required to inform that government of this designation. Within Arizona State government, the proposed rule was sent to 28 contacts within numerous agencies, including the Governor's Office and the Arizona Department of Agriculture, which has jurisdiction over plant protection within State government. Of these 28, the Arizona Department of Environmental Quality and Arizona Game and Fish Department responded in writing to us indicating they had no comments on the proposed designation.

Issue 14: The Service should focus on establishing *Lilaeopsis* in small sites where it can persist, such as creating a small diversion along the San Pedro River that could serve as a refugium for the species, rather than designating large areas that impinge on property and water rights and increase unnecessary regulation.

Service Response: Creation of habitat is an action that could be employed to help recover and ultimately eliminate the need for *Lilaeopsis*' endangered status and the critical habitat designation. However, such decisions will be addressed in the species' recovery plan, which has yet to be developed.

Because critical habitat designation would not affect any uses of private property, unless those uses were federally authorized, funded, or carried out, no infringement of property rights would result from critical habitat designation. The designation is also not expected to increase regulatory burden above and beyond that already imposed by listing, because projects that would adversely modify or destroy critical habitat would also result in jeopardy to the species.

Issue 15: The following finding from the proposed rule is inconsistent with the Act and its implementing regulations: ''Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.''

Service Response: The implementing regulations require that analyses to determine critical habitat shall focus on the principal biological and physical constituent elements within defined areas that are essential to the conservation of the species (50 CFR 424.12(b)(5)). The species occurs in all of the critical habitat units, but in certain reaches within each unit it may at times be absent and some constituent elements may be missing. Nevertheless, these areas are important as habitat during wet cycles and/or are important corridors for movement of plants and genetic material among populations. Since stream courses are dynamic, as is the distribution of the plant, protection of sites that do not currently support the water umbel but could do so in the future are essential to the species' conservation.

Issue 16: The assumption used in the analysis is incorrect, as designation of critical habitat will have economic

impacts on the City of Sierra Vista and Fort Huachuca.

Service Response: The designation of critical habitat for the Huachuca water umbel has been evaluated in the economic context known as ''with'' and ''without'' the rule. It was found that the status of the Huachuca water umbel is such that any adverse modification of its habitat would be likely to jeopardize the species. Further, it is our position that both within and outside of critical habitat, Federal agencies should consult under the jeopardy standard if a proposed action is (1) within the geographic areas occupied by the species, whether or not the Huachuca water umbel has been detected on the specific project site; (2) the project site contains habitat features that can be used by the species; and (3) the proposed action is likely to adversely affect that habitat. Under this condition, any and all real economic consequences would be due to the jeopardy call under section 7 of the Act and an adverse modification without a jeopardy call would not occur. Therefore, the economic consequences identified during the comment period are all due to the listing of the water umbel and not additional consequences accrued from the designation of critical habitat. The economic analysis of designating critical habitat determined that the same regulatory process is in place ''with'' as well as ''without'' the rule, and consequently found no economic effects attributable to the designation of critical habitat.

Issue 17: The designation will have harmful impacts on the quality of life, education, and economic stability of small towns. There is an expressed concern that the proposed critical habitat designation will change groundwater pumping from the San Pedro River and this will negatively affect the city of Sierra Vista and Fort Huachuca which provides jobs to local residents.

Service Response: As stated in the economic analysis, the proposed rule to designate critical habitat for the Huachuca water umbel is not adding any new requirements to the regulatory process. Since the adverse modification standard for critical habitat and the jeopardy standard are almost identical, the listing of the Huachuca water umbel itself invoked the requirement for consultation. The rule to designate critical habitat adds no other requirements not already in place when the species was listed.

Issue 18: The Service's designation of critical habitat has not adequately considered potential economic implications. There is opposition to the fact that the Service did not prepare an initial regulatory flexibility analysis to address potential impact to small businesses, as required under the Regulatory Flexibility Act.

Service Response: The proposed rule was published under very tight time constraints placed by Court Order on December 24, 1998. At that time we prepared a Record of Compliance certification that the proposed critical habitat designation would not have a significant economic impact on small entities. A detailed analysis was initiated by a private firm under Government contract and subsequently, we distributed a draft of the economic report for a 30-day public comment period ending in May, 1999. The findings of the economic reports indicate that the designation of critical habitat adds no new restrictions on economic activity that were not in place with the listing of *Lilaeopsis.* Therefore, there is no economic effect on small entities attributable to this rulemaking, and a regulatory impact analysis is not required.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species concerned.

Economic effects caused by listing *Lilaeopsis* as endangered and by other statutes are the baseline upon which critical habitat is imposed. The economic analysis must then examine the incremental economic and conservation effects of the critical habitat addition. Economic effects are measured as changes in national income, regional jobs, and household income.

An analysis of the economic effects of *Lilaeopsis* critical habitat designation was prepared (McKenney *et al.* 1999) and made available for public review. The final analysis, which reviewed and incorporated public comments, concluded that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing *Lilaeopsis.* The only possible economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation regardless of critical habitat designation. Also, changes or mitigating measures that might increase the cost of the project would only be imposed as a result of critical habitat if the project adversely modifies or destroys that critical habitat. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species; thus no regulatory burden or additional costs would accrue because of critical habitat above and beyond those resulting from listing. Furthermore, we believe any reasonable and prudent alternative that would remove jeopardy to the species would also remove adverse modification of critical habitat.

A copy of the economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review. In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Because the economic analysis identified no economic benefits from excluding any of the proposed critical habitat areas, we made a determination to designate all proposed critical habitat units, with the exception of Unit 7, Joaquin Canyon, which is excluded because its designation is not essential to the conservation of the species and is not in need of special management or protection. No inconsistencies with other agencies' actions and or effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, were identified in the economic analysis. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed in that document and in this final rule, designating critical habitat will not place restrictions on any actions beyond those already resulting from listing *Lilaeopsis* as endangered. We recognize that some towns, counties, and private entities are considered small entities in accordance

with the Regulatory Flexibility Act, however, they also are not affected by the designation of critical habitat because no additional restrictions will result from this action.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis, we determined that no effects would occur to small governments as a result of critical habitat designation.

Takings. In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not ''take'' private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species. Although the majority of lands designated as critical habitat is under Federal administration and management, some riparian systems on private land are being designated.

Federalism

This rule will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists, and in the economic analysis we determined that no economic impacts would result from of critical habitat designation.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act (NEPA)

We have determined that regulations adopted pursuant to section 4 of the Act need not undergo preparation of Environmental Assessments or Environmental Impact Statements as defined under the authority of the NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206—American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' *Lilaeopsis* critical habitat does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary author of this notice is Jim Rorabaugh (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entry for ''*Lilaeopsis schaffneriana* var. *recurva*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Lilaeopsis schaffneriana var. *recurva*.	Huachuca water umbel.	U.S.A. (AZ), Mexico	Apiaceae	E	600	§ 17.96(a)	NA
*	*	*	*	*	*	*	*

3. In section 17.96 add critical habitat for *Lilaeopsis schaffneriana* var. *recurva,* Huachuca water umbel, as the first entry under ''(a) Flowering plants'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

Family Apiaceae: *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel). Critical habitat includes the stream courses identified in the legal descriptions below, and includes adjacent areas out to the beginning of upland vegetation. Within these areas, the primary constituent elements include, but are not limited to, the habitat components which provide—(1) Sufficient perennial base flows to provide a permanently or nearly permanently wetted substrate for growth and reproduction of *Lilaeopsis;* (2) A stream channel that is relatively stable, but subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion; (3) A riparian plant community that is relatively stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and (4) In streams and rivers, refugial sites in each watershed and in each reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

Unit 1. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Sonoita, Arizona.

Gila and Salt Principal Meridian, Arizona: T. 20 S., R. 16 E., beginning at a point on Sonoita Creek in sec. 34 at approx. 31°39′19″ N latitude and 110°41′52″ W longitude proceeding downstream (westerly) to a point in sec. 33 at approx. 31°39′07″ N latitude and 110°42′46″ W longitude covering approx. 2 km (1.25 mi.).

Unit 2. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Lochiel, Arizona.

That portion of the Santa Cruz River beginning in the San Rafael De La Zanja Grant approx. at 31°22′30″ N latitude and 110°35′45″ W longitude downstream (southerly) to Gila and Salt Principal Meridian, Arizona, T. 24 S., R. 17 E., through secs. 11 and 14, to the south boundary of sec. 14 covering approx. 4.4 km (2.7 mi.). Also, a tributary that begins in T. 24 S., R. 17 E., sec. 13 at approx. 31°21′10″ N latitude and 110°34′16″ W longitude downstream (southwesterly) to its confluence with the Santa Cruz River covering approx. 3 km (1.9 mi.).

Unit 3. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona.

Gila and Salt Principal Meridian, Arizona: That portion of Scotia Canyon beginning in T. 23 S., R. 19 E., sec. 3 at approx. 31°27′19″ N latitude and 110°23′44″ W longitude downstream (southwesterly) through secs. 10, 9, 16 and to approx. 31°25′22″ N latitude and 110°25′22″ W longitude in sec. 21 covering approx. 5.4 km (3.4 mi.).

Unit 4. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona.

Gila and Salt Principal Meridian, Arizona: That portion of Sunnyside Canyon beginning in T. 23 S., R. 19 E., on the east boundary of sec. 10 downstream (southwesterly) to the south boundary of sec. 10 covering approx. 1.1 km (0.7 mi.).

Unit 5. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona.

That portion of Garden Canyon in the Fort Huachuca Military Reservation beginning at approx. 31°27′13″ N latitude and 110°22′33″ W longitude downstream (northwesterly) to approx. 31°28′45″ N latitude and 110°20′11″ W longitude covering approx. 6.1 km (3.8 mi.).

Unit 6. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona.

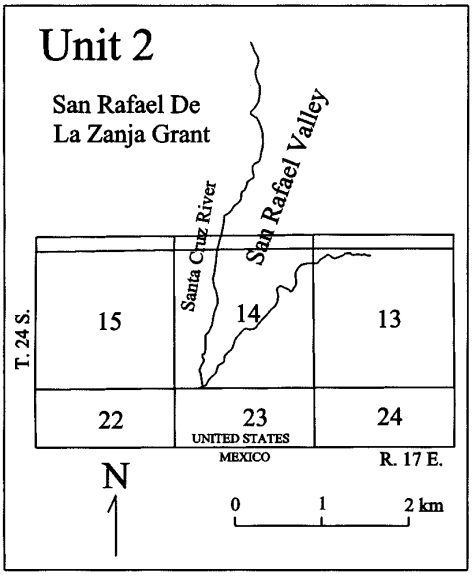
Gila and Salt Principal Meridian, Arizona: That portion of Bear Canyon beginning at a point in T. 24 S., R. 19 E., sec. 1 at approx. 31°22′30″ N latitude and 110°21′47″ W longitude upstream through T. 23 S., R. 19 E., sec. 36 to a point in sec. 31 at approx. 31°23′18″ N latitude and 110°21′22″ W longitude covering approx. 1.7 km (1.0 mi.). Also, continuing up an unnamed tributary beginning at a point in T. 23 S., R. 19 E., sec. 31 at approx. 31°23′18″ N latitude and 110°21′22″ W longitude upstream (northerly) to a point in T. 23 S., R. 19 E., sec. 30 at approx. 31°23′44″ N latitude and 110°21′14″ W longitude covering approx. 0.9 km (0.5 mi.). Also, that portion of Lone Mountain Canyon beginning at its confluence with Bear Creek at a point in T. 23 S., R. 19 E., sec. 36 at approx. 31°22′54″ N latitude and 110°21′43″ W longitude to a point in sec. 36 at approx. 31°23′26″ N latitude and 110°21′58″ W longitude, thence up an unnamed tributary northwesterly into sec. 25 thence northerly to a point at approx. 31°24′13″ N latitude and 110°21′54″ W longitude covering approx. 2.7 km (1.7 mi.). Also that portion of Rattlesnake Canyon beginning at its confluence with Lone Mountain Canyon in T. 23 S., R. 19 E., sec. 36 upstream northeasterly into sec. 25 to a point at approx. 31°22′08″ N latitude and 110°21′31″ W longitude covering approx. 1.5 km (1.0 mi.).

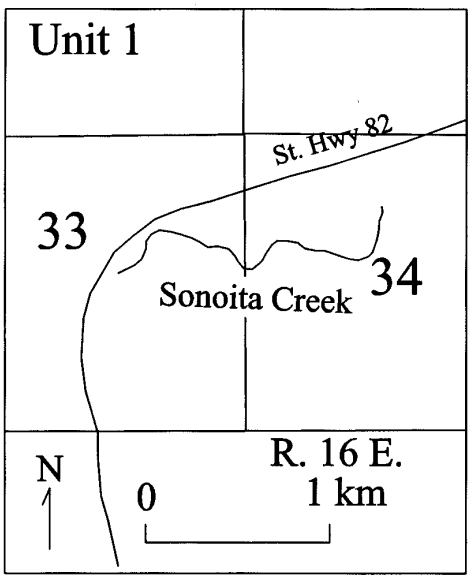
Unit 7. Cochise County, Arizona. From USGS 7.5′ quadrangle maps: Hereford, Ariz.; Tombstone SE, Ariz.; Nicksville, Ariz.; Lewis Springs, Ariz.; Fairbank, Ariz.; Land, Ariz.

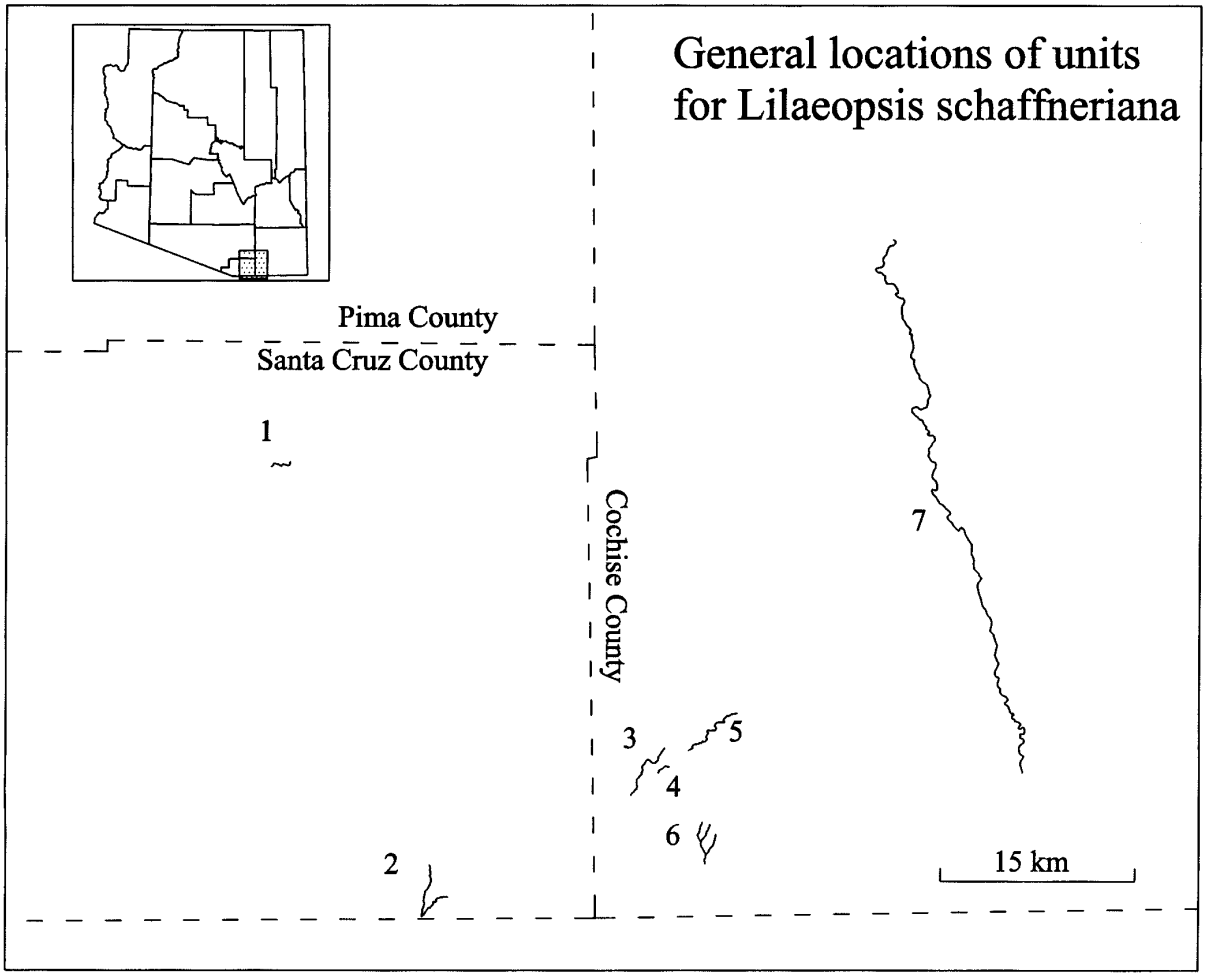
Gila and Salt Principal Meridian, Arizona: That portion of the San Pedro River beginning in the San Rafael Del Valle Grant at a point approx. 200 meters upstream (south) of the Hereford Road bridge at approx. 31°26′16″ N latitude and 110°06′24″ W longitude continuing downstream (northerly) through the San Rafael Del Valle Grant; T. 21 S., R. 22 E.; T. 21 S., R 21 S.; through the San Juan De Las Boquilla y Nogales Grant to a point at approx. 31°48′28″ N latitude and 110°12′32″ W longitude covering approx. 54.2 km (33.7 mi.).

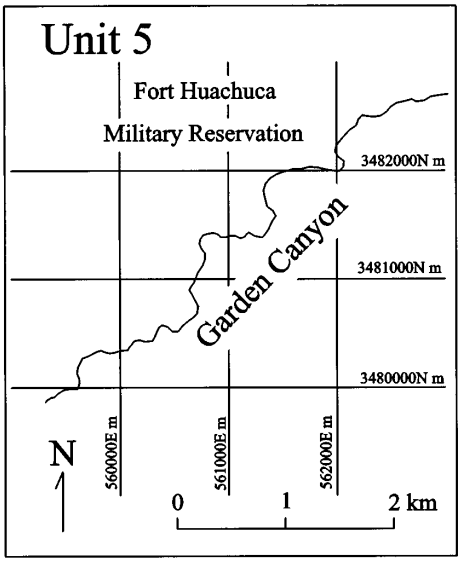
Note: Maps for Units 1–7 follow:

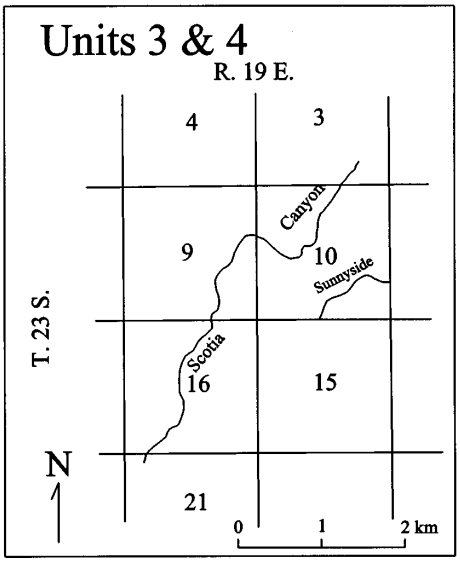
BILLING CODE 4310–55–P

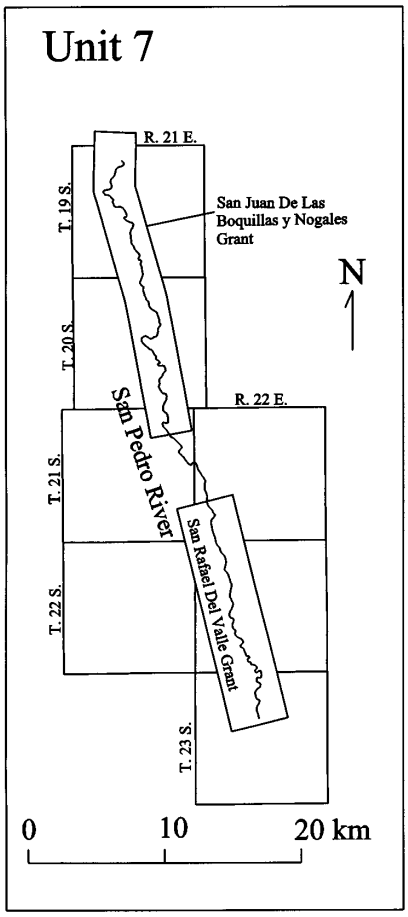

Unit 2
San Rafael De
La Zanja Grant
Santa Cruz River
San Rafael Valley
15
14
13
22
23
24
T. 24 S.
UNITED STATES
MEXICO
R. 17 E.
N
0
1
2 km

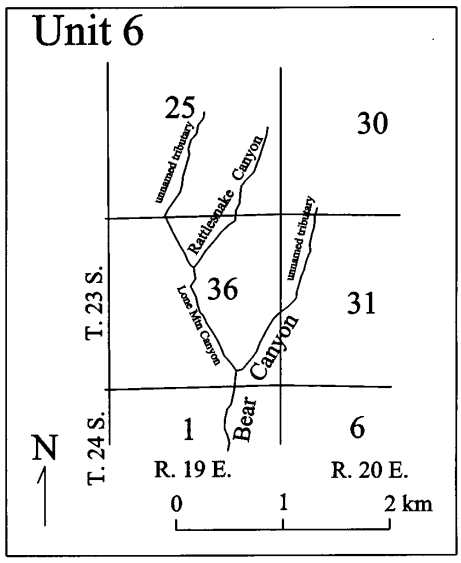

Unit 1
St. Hwy 82
33
34
Sonoita Creek
N
R. 16 E.
0
1 km


General locations of units
for Lilaeopsis schaffneriana
Pima County
Santa Cruz County
Cochise County
1
2
3
4
5
6
7
15 km









Dated: June 30, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–17403 Filed 7–6–99; 1:25 pm]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 64, No. 132
Monday, July 12, 1999

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Chapter II, Subchapter C, and Parts 271, 273 and 276

RIN 0584–AC41

Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This rule proposes to amend the Food Stamp Program Regulations to implement the non-discretionary provisions of this law which affect the Food Stamp Program. These provisions concern changes in the minimum and maximum allotments, the standard and shelter deductions, household composition, the fair market value of vehicles, the definition of homeless, and expedited service. This rule also incorporates, where possible, the principles of the President's Regulatory Reform Initiative and removes overly prescriptive, outdated, and redundant provisions and increases State agency flexibility.

DATES: Comments on this proposed rulemaking must be received on or before September 10, 1999 to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Werts Batko, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486 or e-mailed to Margaret__Batko@FCS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Batko at the above address or by telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Economically Significant under E.O. 12866, and Major under P.L. 104–121, and has therefore been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition, and Nutrition Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Participants will be affected to the extent that their benefits will not increase at the rate they would have under the old law.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8 and Part 279.

Regulatory Impact Analysis

Need for Action

This action is needed to implement 8 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193. This rule proposes to remove the exception in current law that allows persons age 21 and under who are themselves parents or married, and who live with a parent, to participate in the Food Stamp Program as a separate household; change the way the maximum allotments are calculated by using 100% of the Thrifty Food Plan instead of 103%; alter the definition of homeless by setting a time limit (where there was none before) on people whose primary nighttime residence is a temporary accommodation in the home of another; freeze the standard deduction in food stamps for fiscal year 1997 and beyond at $134; retain a cap on the excess shelter expense deduction; freeze the fair market value of vehicle exemption at $4,650; freeze the minimum allotment at $10 a month; increase the number of days in which States have to provide expedited service from 5 to 7 calendar days; eliminate households consisting entirely of homeless people from those categories of households entitled to receive expedited service; and remove the State agency option to exclude from unearned income up to $50 monthly of title IV–D child support payments.

Effects on Administering Agencies

State food stamp offices are affected to the extent that they must implement the provisions described in this action. However, State agencies are not expected to change their personnel due to these changes, so State agencies are expected to incur minimal costs.

Costs

The changes in the food stamp requirements made by the provisions addressed in this rule would reduce Food Stamp Program costs for FY 1998 by approximately $1,930 million.

Definitions—7 CFR 271.2

Definition of Homeless: Current regulations at 7 CFR 271.2 define a homeless individual as an individual lacking a fixed or regular nighttime residence or whose primary nighttime residence is a shelter, a residence intended for those to be institutionalized, a temporary accommodation in the residence of another, or a public or private place not designed to be a regular sleeping accommodation for humans. The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032) (the Act), did not place a time limit on what constitutes a temporary accommodation in the residence of another.

Section 805 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amends section 3(s)(2)(C) of the Act by setting a time limit for people whose primary nighttime residence is a temporary accommodation in the home of another. These people will only be considered homeless if the temporary accommodation is for not more than 90 days. This rule proposes to amend 7 CFR 271.2 accordingly.

Definition of Minimum Benefit: Prior to the PRWORA, section 8(a) of the Act provided that the minimum benefit for one- and two-person households shall be $10 per month, and shall be adjusted to the nearest $5 each October 1 based upon the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

The current regulations at 7 CFR 271.2 define minimum benefit as the minimum monthly amount of food stamps that one- and two-person households received. Section 271.2 also provides that the amount of the minimum benefit will be reviewed annually and adjusted to the nearest $5 each October 1 based on the percentage change in the Thrifty Food Plan for the twelve-month period ending the preceding June.

Section 826 of the PRWORA amends section 8(a) of the Act by removing the annual adjustment provision, thus freezing the minimum benefit at $10. This rule proposes to amend 7 CFR 271.2 accordingly.

Household Concept—7 CFR 273.1

7 CFR 273.1(a)(2)—Special Definition—Treatment of Children Living at Home: Section 3(i)(2) of the Act provides specific definitions for what constitutes a household when a child is living with his or her parents. The Mickey Leland Childhood Hunger Relief Act, Title XIII, Chapter 3 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (Leland Act), amended section 3(i) of the Act with the intention of simplifying the household definition provisions and supporting families that live together and share housing expenses but who do not necessarily purchase and prepare meals together. With certain enumerated exceptions, the simplified household definition allowed persons who live together and who purchase food and prepare meals separately to participate in the Program as separate food stamp households. Specifically, it provided that a child under 22 years of age who is living with his or her natural or adoptive parent or stepparent, is presumed to purchase and prepare meals together with the parent even if he does not, unless the child is also living with his or her own child(ren) or spouse. The ''Certification Provisions of the Mickey Leland Childhood Hunger Relief Act'' rule published October 17, 1996 (61 FR 54279), amended 7 CFR 273.1 accordingly. Currently, 7 CFR 273.1(a)(2)(B) provides that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents, is considered to be purchasing and preparing meals with his or her parents, *unless* the child is also living with his or her own child(ren) or spouse.

Section 803 of the PRWORA amended section 3(i) of the Act by eliminating this exception to the household definition. This rule proposes to make a corresponding change to the regulations at 7 CFR 273.1 to provide that a child under 22 years of age who is living with his or her natural or adoptive parents or stepparents is considered to be purchasing and preparing meals with his or her parents and, therefore, is part of the parents' household.

Definition of Parental Control: To provide the same treatment for a child living with a non-parent adult that is provided for a child living with a natural or adoptive parent or stepparent, the Department is proposing to change the definition of parental control. This rule proposes to amend 7 CFR 273.1 by removing the exception that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

Reorganization of 7 CFR 273.1—Household Concept: In the spirit of the President's Regulatory Reform Initiative, we are proposing to reorganize section 273.1, with the exception of 7 CFR 273.1(d) and (f), which remain unchanged. We are not proposing significant changes to section 273.1 as nearly every provision is set forth in the Act and can be changed only through legislative action. However, we are condensing several sections into a single section; removing unnecessary verbiage and provisions covered elsewhere in the regulations; and providing State agency flexibility where possible. This proposed rule sets out the entire revised text for the convenience of the reader. The specific changes are detailed in the following paragraphs of this section of preamble.

Eligibility for the Food Stamp Program is based on a ''household'' concept. Current regulations at 7 CFR 273.1(a)(1) define what constitutes a ''household'' for Food Stamp Program purposes. Generally, a household means an individual living alone or group of individuals living together and purchasing food and preparing meals in common. There are exceptions to this general household concept policy for certain types of living arrangements which are set forth in 7 CFR 273.1(a)(2), (b), (c), and (e).

This rule proposes to combine the current provisions at 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) governing the inclusion or exclusion from a household of certain individuals living with others in a single section designated as paragraph (b). These individuals include spouses, children, elderly and disabled persons, roomers, live-in attendants, boarders, residents of institutions, and other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. There has been confusion in the past as to when such individuals are included or excluded as household members. We believe including the provisions in separate paragraphs under a single regulatory section rather than addressing each inclusion/exclusion provision in a separate regulatory section will help to clarify the household concept.

Furthermore, this rule would remove the definition of ''spouse'' at 7 CFR 271.2. Most States have laws governing who is considered a spouse. Allowing State agencies to use a State definition of spouse provides flexibility while

ensuring a uniform policy throughout the State.

To ensure uniformity among all States, we are proposing to retain in new paragraph (b)(3) the language currently appearing in 7 CFR 273.1(c)(1) which defines a boarder. Boarders are individuals or groups of individuals residing with others and paying reasonable compensation to the others for meals or meals and lodging. Persons paying less than reasonable compensation for meals are not boarders and, thus, are required to be members of the household providing the services. We are also proposing to retain the language appearing in current rules at 7 CFR 273.1(c)(3)(i) and (ii) that provides that an individual qualifies as a boarder paying reasonable compensation for board when the board payment is for more than two meals a day for which the individual pays an amount equal to or in excess of the maximum food stamp allotment for the appropriate size of the boarder household, or is for less than two meals a day and the individual pays an amount equal to or in excess of two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

We contemplated removing these computation provisions from the rules and allowing State agencies the flexibility to establish a means for computing reasonable compensation. This computation method has been in existence since 1982. Upon researching our files, we found no evidence that these provisions have been a problem for the State agencies or clients. This is not an area of the Program where State agencies have specifically asked for flexibility. We believe the provision as written is simple to administer, equitable to clients, and adaptable to each State's automated certification system. However, we specifically solicit comments from interested parties on this matter.

With the proposed combining of 7 CFR 273.1(a)(2), (b), (c)(1), (c)(3), and (e) in new paragraph (b), 7 CFR 273.1(c) of current regulations would be eliminated. We are adding a new paragraph (c). There has been some confusion by State agencies as to when the policy on ''purchasing food and preparing meals'' overrides policy prohibiting the separation of spouses and children, or prohibiting the participation of boarders. In the new paragraph (c) we would specifically allow State agencies to apply discretion when the rule does not lend itself to a simple and direct answer to certain living situations. We cannot cover all living situations by regulation. We intend that State agencies use prudent judgment in determining when to allow individuals to be certified as separate households from others with whom they reside and to protect Program integrity by not allowing great numbers of households to fragment into smaller households. The language also clarifies that any State policy adopted under this provision must be applied consistently throughout the State.

This rule proposes to remove the language currently appearing at 7 CFR 273.1(c)(2) and (c)(4). The provision at 7 CFR 273.1(c)(2) reminds the State agency that the household with whom the boarder resides can participate in the Program if otherwise eligible. The provision at 7 CFR 273.1(c)(4) reminds the State agency that an individual furnished both meals and lodging and paying less than reasonable compensation for these services is not a boarder, but is a member of the household providing the services pursuant to 7 CFR 273.1(a). We consider these two provisions to be redundant.

We are not proposing any changes in 7 CFR 273.1(d) Head of Household, and (f) Authorized Representative because we believe the current regulations are appropriate. Requirements in current regulations at 7 CFR 273.1(g) for determining the eligibility and benefits of households containing members on strike are redesignated as paragraph (e), with minor editorial changes for clarity.

Application Processing—7 CFR 273.2

Expedited Service: Current regulations at 7 CFR 273.2(i) provide for expedited service to migrant or seasonal farm workers who are destitute and households with less than $150 in combined monthly gross income. Both of these types of households must also have liquid resources of $100 or less to qualify for expedited service. Households in which all members are homeless individuals and eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities are also eligible to receive expedited service. Prior to the PRWORA, section 11(e)(9) of the Act required that benefits be provided not later than five calendar days following a household's date of application for all eligible households.

Section 838 of the PRWORA amends section 11(e)(9) of the Act by increasing the amount of days in which States have to provide expedited service from five to seven calendar days, and eliminating households consisting entirely of homeless people from those categories of households entitled to receive expedited service.

Accordingly, this rule proposes to amend 7 CFR 273.2(i)(3)(i) by striking ''fifth'' calendar day and inserting ''seventh''. This rule also would amend 7 CFR 273.2(i)(3)(ii) by striking ''5 calendar days'' and inserting ''7 calendar days.'' In addition, the rule would remove 7 CFR 273.2(i)(1)(iii) which provides that households in which all members are homeless individuals are entitled to expedited service and redesignates 2(i)(1)(iv) as 2(i)(1)(iii). Homeless individuals may continue to qualify for expedited service under the financial criteria.

Resource Eligibility Standards—7 CFR 273.8

Fair Market Value: The Leland Act amended section 5(g) of the Act to provide that on October 1, 1996, and each October 1 thereafter, the fair market value resource exclusion limit for licensed vehicles shall be adjusted, using a base of $5,000, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. The ''Certification Provisions of the Mickey Leland Hunger Relief Act'' rule, published October 17, 1996 (61 FR 54279), amended 7 CFR 273.8(h)(3) accordingly.

Section 810 of the PRWORA amended section 5(g) of the Act to provide that any licensed vehicle that is used for household transportation or to obtain or continue employment to the extent that the fair market value of the vehicle exceeds $4,600 through September 30, 1996, and $4,650 beginning October 1, 1996 shall be included in financial resources. Section 810 also freezes the fair market value exclusion limit used in determining the countable value of the included vehicle at $4,650. Accordingly, this rule proposes to amend 7 CFR 273.8 to include the new resource exclusion level which is effective October 1, 1996.

We are proposing to modify the definition in 7 CFR 273.8(c)(i)(C) of a vehicle that can be excluded from a household's assets because it is used for income-producing purposes to include vehicles needed for performing a job, although they may also be used for commuting and for normal household errands. Examples would be a car used for a job as a delivery person, a motor vehicle used by a courier, a car used by a household member to call on customers, even though the vehicle is not used for long-distance travel, or any vehicle used to perform a job that was advertised as requiring a personally-

owned motor vehicle. This will ensure that State agencies will not have to verify the relative amount of mileage traveled for income-producing purposes. Accordingly, this rule proposes to amend 7 CFR 273.8 to remove the requirement that a vehicle used for income-producing purposes be used primarily for those purposes in order to be excluded from a household's assets. FNS is seeking comments on the effect this proposal will have on State agencies and on food stamp applicants and recipients.

Reorganization of 7 CFR 273.8: We are taking this opportunity to propose a reorganization of 7 CFR 273.8 and the removal of redundant or unnecessary verbiage.

Section 5(g)(2) of the Act requires that the Secretary prescribe inclusions and exclusions from financial resources following the regulations in force as of June 1, 1982. The law provided an exception for the provisions governing vehicles and inaccessible resources. All other resource inclusion and exclusion provisions described in the regulations as of June 1, 1982 became law by reference and can only be changed through legislative action. Nonetheless, there are some provisions we are able to change and some areas where we can remove redundant or unnecessary verbiage. Those provisions relate to the fair market value test for vehicles, inaccessible resources, and the transfer of resources. This rule would revise 7 CFR 273.8(e), (g), (h), (i) and remove (j).

Currently, paragraph (e)(3) provides that licensed vehicles shall be excluded from resources pursuant to the current provisions under paragraph (h). A list of vehicles excluded from resources without regard to the fair market value or equity value of the vehicle appears in paragraphs (h)(1) and (h)(2). Paragraphs (h)(3) through (h)(6) state that vehicles not excluded under paragraphs (h)(1) or (h)(2) must be evaluated for their fair market value and/or equity value to determine what portion of the value of the vehicle would be counted as a resource, unless the vehicle is exempt from such tests. Regulations governing the determination of the fair market value of a vehicle are set forth in paragraph (g). We believe that this organization is confusing and difficult to follow.

This rule proposes to remove all the provisions from paragraph (h) and transfers them to either (e) or (g). The list of vehicles excluded from resource consideration currently contained in paragraphs (h)(1)(i)–(v) and (h)(2) are incorporated into 7 CFR 273.8(e)(3). The remaining provisions of paragraph 5(h)(3), (h)(4) and (h)(5) concerning the treatment of non-excluded vehicles are rewritten and combined with the provisions in paragraph (g) to improve readability. As a result of transferring the text of paragraph (h), that section would no longer exist and paragraph (i) would be re-designated as paragraph (h). A conforming amendment would also be made to paragraphs (e)(16) and (e)(18) to reference the relocation of the vehicle exclusion provisions. Furthermore, the current 7 CFR 273.8(j), which provides that the resources of certain non-household members shall be treated in accordance with 7 CFR 273.11, would be removed. We believe this reference is unnecessary.

In keeping with the principles of the President's Regulatory Reform Initiative of increasing State flexibility, this interim rule removes the proscriptive regulations in paragraph (g) for determining the fair market value of a vehicle and allows State agencies to establish their own methodologies. However, to ensure client protection, we are proposing to retain the prohibition against increasing the basic value of a vehicle because of low mileage, optional equipment, or special apparatus for the handicapped as State variations may affect eligibility and costs.

This proposed rule would also revise paragraph (e)(11) which excludes from countable resources any resource that is specifically excluded by any other Federal statute and lists such excluded resources. This rule proposes to remove the specific list of resources excluded by other Federal laws. We periodically provide State agencies with a list of such excluded resources through agency memoranda because the list changes frequently and quickly becomes outdated. Doing this by regulations results in incomplete regulations, thereby causing confusion. We believe it is sufficient to have the regulation simply provide an exclusion for any resource specifically excluded by another Federal statute and continue to notify State agencies through agency memoranda when such laws are enacted.

Income and Deductions—7 CFR 273.9

Standard Deduction: Current regulations at 7 CFR 273.9(d)(7) provide that effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI-U for items other than food for the twelve months ending the preceding June 30. Section 809 of the PRWORA amends section 5(e) of the Act to provide that the Secretary shall allow a standard deduction for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States of $134, $229, $189, $269, and $118, respectively. The annual adjustment is eliminated. This rule would amend the regulations at 7 CFR 273.9(d)(7) accordingly.

Excess Shelter Expense Deduction: The current regulations at 7 CFR 273.9(d)(5) provide that households are entitled to a deduction from income for excess shelter expenses that exceed 50 percent of the household's net income remaining after all other deductions. For households with an elderly or disabled member (as defined in 7 CFR 271.2), the amount of the deduction is not limited. For other households, the deduction is limited. This limit, usually referred to as the ''shelter cap,'' has been changed several times due to legislation. The current regulations at 7 CFR 273.9(d)(8) were last updated in 1987 and provide that effective October 1, 1988, and each October 1 thereafter, the maximum limit for the excess shelter expense deduction shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the 12 months ending the preceding June 30.

The Leland Act amended section 5(e) of the Act to gradually increase and then remove the limit on the amount of excess shelter expenses these households could deduct from their income to determine eligibility and benefits. The Leland Act provided that effective October 1, 1995 through December 31, 1996, the excess shelter expense deduction in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, shall not exceed $247, $429, $353, $300, and $182, respectively, and that the cap be removed January 1, 1997.

The ''Excess Shelter Expense Limit and Standard Utility Allowances'' rule, published on November 22, 1994 (59 FR 60098), proposed to make the corresponding change in the regulations at 7 CFR 273.9(d)(8). This rule has been overtaken by more recent statutory changes and will not be published in final form.

Section 809 of the PRWORA once again amended section 5(e) of the Act in regard to the excess shelter limit. Section 809 provides that a household shall be entitled to an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 percent of monthly household income after all other applicable deductions have been allowed. In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States

and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed:

(i) for the period beginning on the date of enactment of the law and ending on December 31, 1996, $247, $429, $353, $300, and $182 per month, respectively;

(ii) for the period beginning on January 1, 1997, and ending on September 30, 1998, $250, $434, $357, $304, and $184 per month, respectively;

(iii) for fiscal years 1999 and 2000, $275, $478, $393, $334, and $203 per month, respectively; and

(iv) for fiscal year 2001 and each subsequent fiscal year, $300, $521, $429, $364, and $221 per month, respectively.

This proposed rule would make a corresponding change to the regulations at 7 CFR 273.9(d)(8).

Determining Household Eligibility and Benefit Levels—7 CFR 273.10

Maximum Allotments: As required by section 3(o) of the Act prior to the PRWORA, the current regulations at 7 CFR 273.10(e)(4)(ii)(F) provide that effective October 1, 1990 and each October 1 thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the Thrifty Food Plan (TFP) for the four-person reference family for the preceding June, rounded to the nearest lower dollar increment.

Section 804 of the PRWORA amends section 3(o) of the Act by providing that on October 1, 1996, and each October 1 thereafter, the Department shall adjust the cost of the maximum allotment to reflect the cost of the Thrifty Food Plan in the preceding June, and round the result to the nearest lower dollar increment for each household size, except that on October 1, 1996, the Sectretary may not reduce the cost of the maximum allotment in effect on September 30, 1996.

Accordingly, this proposed rule would amend 7 CFR 273.10(e)(4)(ii) to provide that effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP, as defined in section 271.2, for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

In addition, the Department is proposing to remove 7 CFR 273.10(e)(4)(ii)(A) through (F) as these paragraphs, which provide for the adjustment of the TFP for the years 1983 through 1995, are outdated.

Conforming Amendments

Aid to Families with Dependent Children: The current food stamp regulations contain the terms, ''Aid to Families with Dependent Children,'' ''AFDC,'' and ''Aid to Families with Dependent Children (AFDC).'' The PRWORA block granted this program to the States and renamed it the Temporary Assistance for Needy Families (TANF) program. Therefore, these terms are obsolete. Section 109 of the PRWORA made conforming amendments to the Food Stamp Act by replacing those terms with a reference to assistance under a State program funded under part A of title IV of the Social Security Act.

Accordingly, this rule proposes to amend Subchapter C by replacing the words ''Aid to Families with Dependent Children'' with ''Temporary Assistance for Needy Families'', by replacing ''AFDC'' with ''TANF'', and by replacing ''Aid to Families with Dependent Children (AFDC)'' with the phrase ''Temporary Assistance for Needy Families (TANF)''.

Child support payments: As required by section 5 of the Act prior to the PRWORA, the current regulations at 7 CFR 273.9(c)(12) provide that the State agency has the option to exclude from unearned income, up to $50 monthly of title IV-D child support payments in cases where such payments are received by the households from the title IV-D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households. Section 109 of the PRWORA amends section 5 of the Act by removing this exclusion. This rule proposes to remove 7 CFR 273.9(c)(12) and renumber (c)(13) through (c)(17) accordingly.

As required by section 5 of the Act prior to the PRWORA, current regulations at 7 CFR 276.2(e)(1) provide that the State agency shall be liable to FCS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in section 273.9(c)(12). Section 109 of the PRWORA amends section 5 of the Act by removing the payback. Accordingly, this rule would remove 7 CFR 276.2(e) in its entirety.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the PRWORA without waiting for formal regulations. Sections 803 (Treatment of Children Living at Home), 805 (Definition of Homeless), and 838 (Expedited Service) were required to be implemented as of August 22, 1996. Sections 804 (Adjustment of the Thrifty Food Plan) and 810 (Vehicle Allowance) were required to be implemented as of October 1, 1996. Section 809 (Excess Shelter Cap) required no change until January 1, 1997. Sections 809 (Standard Deduction), 826 (Minimum Allotment), and 109 (Conforming Amendments) required no immediate action by the State agencies. The Department is proposing that the changes in this rule be effective and must be implemented the first day of the month 60 days from date of publication of the final rule. State agencies shall implement the provisions no later than the required implementation date. State agencies would be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. If implementation of the above Act or this rule is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variances resulting from implementation of the provisions of the final rule would be excluded from error analysis for 120 days from the first day of the month 60 days from date of publication of the final rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter II, subchapter C, and parts 271, 273, 276 are proposed to be amended as follows:

SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM—[AMENDED]

1. In Subchapter C:

a. The words ''Aid to Families with Dependent Children'' are removed wherever they appear and the words ''Temporary Assistance for Needy Families'' are added in their place.

b. The references to ''AFDC'' are removed wherever they appear and ''TANF'' is added in their place.

c. The references to ''Aid to Families with Dependent Children (AFDC)'' are removed wherever they appear, and the words ''Temporary Assistance for Needy Families (TANF)'' are added in their place.

2. The authority citation for parts 271, 273, and 276 is revised to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

3. In § 271.2:

a. Paragraph (3) of the definition of ''Homeless individual'' is amended by adding the words ''for not more than 90 days'' after the word ''accommodation''.

b. The definition of ''Minimum benefit'' is amended by removing all text after the word ''benefit'' in the second sentence and adding in its place ''shall be $10.''

c. The definition of ''Spouse'' is removed.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements.* (1) *Required household combinations.* The following individuals who live with others shall be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A child under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child shall be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household.

(2) *Elderly and disabled persons.* Notwithstanding the provisions of paragraph (a) of this section, an otherwise eligible member of a household who is 60 years of age or older and is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or a non disease-related, severe, permanent disability may be considered, together with his or her spouse (if living there), a separate household from the others with whom the individual lives. Separate household status under this provision shall not be granted when the income of the others with whom the elderly disabled individual resides (excluding the income of the elderly and disabled individual and his or her spouse) exceeds 165 percent of the poverty line.

(3) *Boarders.* (i) Residents of a commercial boarding house, regardless of the number of residents, are not eligible to participate in the Program. A commercial boarding house is an establishment licensed as an enterprise that offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house is a commercial establishment which offers meals and lodging for compensation with the intent of making a profit.

(ii) All other individuals or groups of individuals paying a reasonable amount for meals or meals and lodging shall be considered boarders and are not eligible to participate in the Program *independently* of the household providing the board. Such individuals or groups of individuals may participate, along with a spouse or children living with them, as members of the household providing the boarder services, only at the request of the household providing the boarder service. An individual paying less than a reasonable amount for board shall not be considered a boarder but shall be considered, along with a spouse or children living with them, as a member of the household providing the board.

(A) For individuals whose board arrangement is for more than two meals per day, ''reasonable compensation'' shall be an amount that equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household.

(B) For individuals whose board arrangement is for two meals or less per day, ''reasonable compensation'' shall be an amount that equals or exceeds two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(iii) Boarders shall not be considered to be residents of an institution for the purposes of paragraph (b)(7)(vii) of this section.

(4) *Foster care individuals.* Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program shall be considered to be boarders and cannot participate in the Program *independently* of the household providing the foster care services. Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care services, only at the request of the household providing the foster care.

(5) *Roomers.* Individuals to whom a household furnishes lodging for compensation, but not meals, may participate as separate households. Persons described in paragraph (b)(1) of this section shall not be considered roomers.

(6) *Live-in attendants.* Live-in attendants may participate as a separate household. Persons described in paragraph (b)(1) of this section shall not be considered live-in attendants.

(7) *Ineligible household members.* The following persons are not eligible to participate as separate households or as a member of any household:

(i) Ineligible aliens and students as specified in § 273.4 and § 273.5, respectively;

(ii) SSI recipients in ''cash-out'' States as specified in § 273.20;

(iii) Individuals disqualified for noncompliance with the work requirements of § 273.7;

(iv) Individuals against whom a sanction was imposed for failure to comply with a workfare requirement as specified in § 273.22;

(v) Individuals disqualified for failure to provide an SSN as specified in § 273.6;

(vi) Individuals disqualified for an intentional Program violation as specified in § 273.16; and

(vii) Residents of an institution, with some exceptions. Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7) (vii)(A) through (b)(7)(vii)(E) of this section. The individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) can

participate in the Program and shall be treated as separate households from the others with whom they reside pursuant to the mandatory household combination requirements of paragraph (b)(1) of this section, unless otherwise stated:

(A) Individuals who are residents of federally subsidized housing for the elderly;

(B) Individuals who are narcotic addicts or alcoholics who reside at a facility or treatment center for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, and their children but not the spouse of such persons who live with them at the treatment center or facility;

(C) Individuals who are disabled or blind who are residents of group living arrangements;

(D) Individual women or women with their children who are temporarily residing in a shelter for battered women and children; and

(E) Individuals who are residents of public or private nonprofit shelters for homeless persons.

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied consistently throughout the State.

* * * * *

(e) *Strikers.* Households with a striking member are not eligible to participate in the Program, unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. A striker shall be anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker.

(1) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(2) Eligibility at the time of application shall be determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of non-striking members during the month of application. If the household is eligible, the higher income figure shall also be used in determining the household's benefits.

* * * * *

§ 273.2 [Amended]

5. In § 273.2:

a. Paragraph (i)(1)(iii) is removed.

b. Paragraph (i)(1) (iv) is redesignated as paragraph (i)(1)(iii).

c. Paragraph (i)(3)(i) is amended by removing the word ''fifth'' wherever it appears and adding the word ''seventh'' in its place.

d. Paragraph (i)(3)(ii) is amended by removing the words ''5 calendar days'' and adding the words ''7 calendar days'' in its place.

6. In § 273.8:

a. Paragraph (c)(2) is amended by removing the regulatory reference to ''paragraph (h)'' and adding in its place a regulatory reference to ''paragraph (g)''.

b. Paragraph (e)(3) is revised.

c. Paragraph (e)(11) is amended by removing the second sentence of the introductory text and by removing paragraphs (e)(11)(i) through (e)(11)(ix).

d. Paragraph (e)(16) is amended by removing the regulatory reference to ''paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(v)'' and adding in its place the regulatory reference to ''paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(E)'', respectively.

e. Paragraph (e)(18) is amended by removing the regulatory reference to ''paragraph (h)'' and adding in its place a regulatory reference to ''paragraph (g)''.

f. Paragraph (g) is revised.

g. Paragraphs (h) and (j) are removed and paragraph (i) is redesignated as paragraph (h).

The revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the special needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles shall be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusion in paragraphs (e)(3)(i)(A) through (e)(3)(i)(F) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when

a fishing boat is frozen in and cannot be used.

* * * * *

(g) *Determining the value of non-excluded vehicles.* (1) The State agency shall individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section. That portion of the fair market value that exceeds $4,650 beginning October 1, 1996, shall be counted in full toward the household's resource level, regardless of any encumbrances on the vehicle. Such licensed vehicles as well as all unlicensed vehicles shall *also* be evaluated for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test. If the vehicle has a countable fair market value of more than $4,650 after October 1, 1996, and also has a countable equity value, only the greater of the two amounts shall be counted as a resource. Only the following vehicles are exempt from the equity value test:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per household; and

(iii) Any other vehicle used to transport household members to and from employment (including times during temporary periods of unemployment), or to and from training or education that is preparatory to employment, or to seek employment in compliance with the employment and training criteria specified in § 273.7.

(2) State agencies shall be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Households which claim that the State agency's determination of the value of its vehicle(s) does not apply shall be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

* * * * *

7. In § 273.9:

a. Paragraph (c)(12) is removed and paragraphs (c)(13), (c)(14), (c)(15), (c)(16) and (c)(17) are redesignated as paragraphs (c)(12), (c)(13), (c)(14), (c)(15) and (c)(16) respectively.

b. Paragraphs (d)(7) and (d)(8) are revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(7) *Adjustment of standard deduction.* Effective October 1, 1996, for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the standard deduction shall be $134, $229, $189, $269, and $118, respectively.

(8) *Adjustment of shelter deduction.* In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction shall not exceed

(i) For the period beginning August 22, 1996, and ending on December 31, 1996, $247, $429, $353, $300, and $182 per month, respectively;

(ii) For the period beginning on January 1, 1997, and ending on September 30, 1998, $250, $434, $357, $304, and $184 per month, respectively;

(iii) For the period beginning on October 1, 1998 and ending on September 30, 2000, $275, $478, $393, $334, and $203 per month, respectively; and

(iv) For the period beginning on October 1, 2000 and thereafter, $300, $521, $429, $364, and $221 per month, respectively.

* * * * *

8. In § 273.10 paragraph (e)(4)(ii) is revised to read as follows.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels. * * *

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments. * * *

(ii) Adjustment. Effective October 1, 1996, the maximum food stamp allotments shall be based on 100% of the cost of the TFP as defined in section 271.2 for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

* * * * *

§ 276.2 [Amended]

9. In § 276.2, paragraph (e) is removed.

Dated: June 29, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 99–17445 Filed 7–9–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1848–97]

RIN 1115–AE83

Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (INS) regulations relating to apprehension and removal of aliens under section 241 of the Immigration and Nationality Act (Act). This proposed rule establishes an administrative process whereby criminal aliens in state custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. This proposed rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

DATES: Written comments must be submitted on or before September 10, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling please reference INS No. 1848–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Senior Special Agent, Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514–2998. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, 110 Stat. 1214. The AEDPA contained numerous provisions dealing with criminal aliens, designed to ''enhance the ability of the United States to deport criminal aliens.'' See Conference Report on S. 735 (H.R. Rept. No. 104–518, dated April 15,

1996), at page 119 (concernign AEDPA Sec. 441).

Section 438(a) of AEDPA added subsection 242(h)(2) to the Act, authorizing, but not compelling, the Attorney General to remove certain aliens convicted of nonviolent offenses prior to the completion of their sentence of imprisonment.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, became law. The provisions formerly contained in section 242(h)(2) of the Act, as amended by AEDPA, and subsequently further amended by IIRIRA, are now found in section 241(a)(4)(B) of the Act. Both AEDPA and IIRIRA contain separate provisions, now incorporated in the Act, which distinguish between Federal and state prisoners. However, there are some differences between AEDPA and IIRIRA pertaining to categories of Federal and state inmates barred from early release. Section 305(a) of IIRIRA both expands and contracts the classes of offenders eligible for consideration for early removal under the Act as amended by AEDPA. Under IIRIRA, aliens in the custody of the state convicted of offenses defined in section 101(a)(43)(C) or (E) of the Act are ineligible for early release. Under IIRIRA, alien smuggline is no longer a bar to eligibility for state inmates.

The statutory provisions distinguish between Federal and state inmates. Because of the clear distinctions between provisions and procedures for Federal and state inmates, the two require distinct regulatory separation. The Department of Justice is giving consideration to various means for implementing the statute on the Federal level. This proposed rule addresses state inmates only.

According to section 241(a)(4)(B)(ii), an alien may be removed from state custody if the chief state official exercising authority with respect to the incarceration of the alien makes a determination that the offense is a nonviolent offense, and that removal is in the best interest of the state. The chief state official must then submit a written request for the alien's removal to the Attorney General.

Section 438(b) of the AEDPA amended section 276 of the Act, (8 U.S.C. 1326) to require incarceration for the remainder of their sentence, without parole, of aliens who were released for early removal pursuant to the provisions of section 438(a) of the AEDPA, and who reenter the United States without the express permission of the Attorney General.

Further, section 241(a)(4)(D) of the Act, as amended by IIRIRA, provides that no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or the consideration for release or removal of any alien.

Procedurally, this proposed regulation provides that in order to participate a state or its political subdivision must have enabling legislation authorizing early release of prisoners. Participation in the program will be contingent on a formal agreement between the state and the Service in the form of a uniform memorandum of understanding. The memorandum of understanding may be modified in writing by mutual consent of the signatories and/or may be canceled by either party upon 30 days' written notice. Only criminal aliens approved by both the state and the Service as suitable candidates will be released to the Service for removal. In accordance with the Victim and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record regarding the early release of criminal aliens for removal. The state will assist the Service by providing, to the extent allowed under state law, access to and use of information contained in the alien's correctional files to assist in the removal of such criminal aliens. The date of the criminal alien's release will be coordinated between the Service and the governmental entity representing the state or its political subdivision. The criminal alien will remain in the custody of the state until: a final order of removal is issued, there are no impediments to obtaining travel documents for the alien, and arrangements have been made to remove the alien. In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the state when a final order has been issued and removal arrangements have been made. At that time the transfer will take place. If after the transfer of custody, the alien cannot be removed promptly, the Service will return the alien to the custody of the state. The state will enter relevant information relating to such criminal aliens released and removed into its criminal history records system, which must provide for rapid identification of such aliens should they reenter or attempt to reenter the United States or otherwise be encountered by law enforcement personnel. The Service will also develop and maintain a permanent alien file detailing the identity of each such criminal alien. The Service will ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation (FBI) for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC). The state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for offenses specifically excluded by Federal statute. The state will advise such aliens that the release is conditional and the alien must agree in writing that he/she has been informed that the criminal sentence(s) has been suspended, not rescinded, and that such suspended sentence(s) will remain in abeyance for the state to reimpose should the alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived all rights to appeal any order of removal and waived the right to apply for relief from removal. The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the time period statutorily specified in 8 U.S.C. 1182 (10 years, 20 years, or at any time in the case of an alien convicted of an aggravated felony), unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the conditions of the alien's release and shall result in such alien's return to the custody of the state for the completion of the alien's sentence and the alien shall be subject to Federal prosecution. The state or the Service will notify the other of any encounter with such alien. If, during the period of any remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that request and provide an opportunity for the state to note any objection.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors:

This proposed rule will not have a significant economic impact on small

entities since it pertains to removal of criminal aliens incarcerated in state institutions (or a political subdivision thereof). The removal of these individuals from the United States will not adversely or materially affect a sector of the economy, cause major increases in costs or prices for consumers or have other adverse effects on the economy in terms of productivity, competition, jobs, or the environment, public health or safety or adversely affect small government jurisdictions.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. The alien's release under the provisions of this section is conditional. Any violation of the terms of release will result in a violation of that conditional release, resulting in a return to state or local custody. State (or political subdivision thereof) participation in this process is at the discretion of the state or political subdivision thereof. This rule does not impose an enforceable duty on state, local, or tribal governments. Not only is the program voluntary, but the state or political subdivision derives considerable benefit from participation in the program. The state or subdivision is enabled to remove nonviolent offenders from their penal facilities prior to expiration of sentence. This saves the state or subdivision considerable resources. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

Section 241.17 of this proposed rule allows states or a political subdivision thereof to enter into an agreement with the Service for participation in an early release program for removal of nonviolent alien offenders in state custody prior to the completion of the alien's sentence to imprisonment. Some of the provisions in the agreement contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Therefore, the agency solicits public comments on the information collection requirement for 30 days in order to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Since participation on the part of state is voluntary and the number of states or subdivisions electing to participate is unknown as is an estimate of the number of eligible nonviolent alien offenders states would recommend as candidates for early removal, the Service does not have sufficient data to estimate of the number of hours that would constitute the total annual reporting burden.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the information collection requirement. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden should direct them to: Office of Information and Regulatory Affairs (OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235. The comments or suggestions should be submitted within 30 days of publication of this rulemaking.

Executive Order 12866

This proposed rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. An assessment of the need for the regulatory action, an explanation of how the action will meet that need, an assessment of the potential costs and benefits of the regulatory action and of any reasonable feasible alternatives, and any bearing which the regulatory action has on state, local, and tribal governments in the exercise of their governmental functions has been submitted to the Office of Management and Budget under section 6(a)(3)(B)–(D).

Executive Order 12612

The regulation proposed herein will not have substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. As previously stated under the Unfunded Mandates Reform Act of 1995, this proposed rule will save considerable resources of participating states and subdivisions. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 241

Administration practice and procedure, Aliens, Immigration.

Accordingly, part 241 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

1. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

2. Section 241.17 is added to read as follows:

§ 241.17 Removal of nonviolent offenders in state custody prior to the completion of the alien's sentence of imprisonment pursuant to section 241(a)(4)(B) of the Act.

(a) *Authorization.* (1) A state or its political subdivision must have enabling legislation in order to enter into an agreement with the Service for participation in an early release program. Participation in the program will be contingent on a formal agreement bearing the signatures of the Governor of the state or designee and the Commissioner or designee. In the case of a political subdivision, participation will be contingent on the signature of the leading official of the political subdivision and the Commissioner or designee following formal agreement between the state and the Service. An early release program for inmates of a state or political subdivision will be implemented through a Memorandum of Understanding (MOU) developed by the Service. From the date of final publication in the **Federal Register**, requests for consideration under this provision of the Act should be referred to the chief state official exercising authority with respect to the confinement of the alien. Any inquiries pending with the Attorney General or the Service at that time will be referred to the appropriate state authority.

(2) The uniform MOU will constitute the agreement between the Service and a state or political subdivision thereof for the removal of nonviolent alien offenders prior to the completion of the alien's sentence to imprisonment. The MOU will govern the procedures and responsibilities of the parties. Specific operational procedures for implementing the MOU should be negotiated between the appropriate state officials and Service District Offices. The MOU imposes no limitations on the discretion of the Attorney General to exercise authority or to decline to do so with regard to section 241(a)(4)(B) of the Act. The MOU does not confer any rights on any third party.

(b) *Agreement provisions.* The MOU shall include the following provisions:

(1) Only criminal aliens approved by both agencies as suitable candidates will be released to the Service for removal. The Service District Office will review the state's written submission. A query of the National Crime Information Center (NCIC) will be performed to determine if there are outstanding wants or warrants in other jurisdictions. Notification will be provided to the Department of Justice Office of International Affairs of those aliens being considered for early release to provide that office with the opportunity to note any objection. The Service will indicate by return document which aliens the Service finds appropriate for the program. The decision of the Service District Office as the Attorney General's delegate is not reviewable.

(2) In accordance with the Victims and Witness Protection Act of 1982 (VWPA) and the Attorney General's Guidelines for Victim and Witness Assistance, the state will make reasonable efforts to notify victims of record at the time of request for consideration under this section regarding the early release of the alien for removal and the nature and intent of the removal of nonviolent alien offenders prior to the completion of their sentence to imprisonment.

(3) The state will certify that there are no detainers or other litigation involving the alien as a defendant or witness in any criminal proceeding outstanding at the time of the request for consideration for early release.

(4) The governmental entity representing the state or its political subdivision will assist the Service and its agents by providing, to the extent allowed under state law, access to and use of documents, materials and information contained in the aliens' correctional files for the purpose of assisting the Service in its efforts to remove such criminal aliens from the United States.

(5) The date that criminal aliens are to be released to the Service for removal will be coordinated between the Service and the governmental entity representing the state or its political subdivision. Any criminal alien determined eligible for removal pursuant to section 241(a)(4)(B) of the Act will remain in the custody of the governmental entity representing the state or its political subdivision unit:

(i) A final order of removal is issued against such alien by an Immigration Judge or through any other procedure authorized by law,

(ii) There are no impediments to obtaining travel documents, and

(iii) Arrangements have been made to remove the alien.

(6) In order to transfer custody of the criminal alien from the state to the Service, the Service will notify the governmental entity representing the state or its political subdivision when the final order of removal is issued and the consular official has assured the Service that a travel document will be immediately issued upon presentation of the criminal alien. The Service will then maintain custody of such alien in a secure environment until such time as the Service effectuates the alien's removal from the United States. If, after the Service has accepted custody of a criminal alien released by the governmental entity representing the state or its political subdivision for removal, the alien cannot be promptly removed from the United States, the Service will return that alien to the custody of the state. The state must accept such alien into its custody unless prevented from doing so by order of a court of competent jurisdiction or other lawful authority.

(7) The state will enter relevant information relating to criminal aliens released and removed subject to the provisions of section 241(a)(4)(B) of the Act into its criminal history records system. Such system must provide for the rapid identification of any alien who is released and removed subject to the provisions of section 241(a)(4)(B) of the Act should such alien reenter or attempt to reenter the United States and/or otherwise be encountered by law enforcement personnel. The Service will develop and maintain a permanent alien file detailing the identity of each criminal alien subject to treatment under section 241(a)(4)(B) of the Act, including his or her fingerprints and photograph, and executed warrant of removal, for the purpose of allowing rapid identification of any alien released for purposes of removal under section 241(a)(4)(B) of the Act, should such alien reenter or attempt to reenter the United States.

(8) The Service will also ensure that fingerprint dispositions are expeditiously forwarded to the Federal Bureau of Investigation for inclusion in the subject's criminal history record and that the alien's name is forwarded to the National Crime Information Center (NCIC).

(9) The state may submit names for consideration for removal prior to completion of criminal sentences of aliens who have committed nonviolent offenses as defined under state law, except for the following offenses specifically excluded by section 241(a)(4)(B) of the Act: illicit trafficking in firearms or destructive devices (as defined in 18 U.S.C. 921), or in explosive materials (as defined in 18 U.S.C. 841(c)); an offense described in 18 U.S.C. 842(h) or (i) or 18 U.S.C. 844(d), (e), (f), (g), (h), or (i) (relating to explosive materials offenses); 18 U.S.C. 922(g)(1), (2), (3), (4), (5), (j), (n), (o), (p), or 18 U.S.C. 924(b) or (h) (relating to firearms offenses); or an offense described in section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses).

(10) Any alien being considered for early release pursuant to section 241(a)(4)(B) of the Act shall be advised

by the governmental entity representing the state or its political subdivision that the release is conditional and the alien must agree in writing that the following special conditions have been met:

(i) The criminal alien has been informed that any state action to release the alien from incarceration pursuant to section 241(a)(4)(B) of the Act will only suspend, not rescind, the alien's remaining criminal sentence(s) and any related period(s) of incarceration, and that such suspended sentence(s) will be tolled and remain in abeyance to be reinstated should the alien breach any of the express conditions of the executive release order.

(ii) The criminal alien has a final order of removal as required under section 241(a)(4)(B) of the Act. Further, the alien must have admitted and conceded the charges and factual allegations which form the basis of the removal action, and must have waived all rights to appeal any order of removal issued pursuant to authorized procedures. The alien must have waived any right to pursue an appeal of the order of removal, or to seek any relief therefrom, and must further waive any possible challenge to removal under domestic or international law, including but not limited to asylum, withholding of removal, and protection from ''refoulement'' under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(iii) The criminal alien has withdrawn any pending appeal of the underlying criminal conviction and sentence, and waived his or her right to pursue such appeal if the time for filing has not yet expired.

(iv) The criminal alien must cooperate fully with the Service in connection with execution of any final order of removal, particularly with respect to producing travel documents or other evidence of nationality.

(v) The criminal alien must remain outside the United States and agree to refrain from making any attempt to reenter the United States for the period specified by section 212 (a)(9)(A)(ii) of the Act (8 U.S.C. 1182(a)(9)(A)(ii)), as amended, in that an alien who has been ordered removed or departed while an order of removal was outstanding is ineligible to seek admission within 10 years of the date of such alien's departure or removal, or within 20 years of such date in the case of a second or subsequent removal, or at any time in the case of an alien convicted of an aggravated felony, unless the Attorney General has expressly consented to such alien's reentry. Any unlawful return to the United States shall constitute a violation of the alien's conditions of release and shall result in such alien's return to the custody of the state (or political subdivision thereof) for the completion of the alien's sentence and the alien will be subject to Federal prosecution.

(ii) A criminal alien granted early release for removal, who is removed but subsequently illegally returns to the United States may be subject to Federal prosecution. Either party to this agreement shall notify the other of any encounter with such alien. The Attorney General will determine whether the alien should be prosecuted for an unlawful reentry pursuant to section 276 of the Act. After the Attorney General determines whether to prosecute the alien for reentry after removal and any Federal action or period of Federal incarceration has concluded, the state will assume custody of such alien and bear all costs associated with the transportation and escort back to the state or locality. The state (or political subdivision thereof) will hold the alien in state custody to serve the balance of the sentence of imprisonment in an appropriate state facility at state expense.

(12) If, during the period of any remaining sentence, the criminal alien applies to the Attorney General for readmission after removal under this program, and the Service is inclined to grant the request, the Service will notify the state of that request and provide an opportunity for the state to note any objection by the victim or other state authority.

(13) The MOU may be modified in writing at any time by mutual consent of the signatories and/or may be canceled by either party upon 30 days written notice. Pursuant to section 241(a)(4)(D) of the Act, as amended by IIRIRA, no cause or claim may be asserted under section 241 against any official of the United States or of any state to compel the release, removal, or consideration for release or removal of any alien and all MOU's will so state.

Dated: July 2, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–17563 Filed 7–9–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–13–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. J–2 Series Airplanes That are Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) J–2 series airplanes equipped with wing lift struts. The proposed AD would require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The proposed AD would also require incorporating a ''NO STEP'' placard on the lift strut. The proposed AD is the result of the Federal Aviation Administration (FAA) inadvertently omitting the J–2 series airplanes from the applicability of AD 99–01–05. The actions specified by the proposed AD are intended to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the F. Atlee Dodge supplemental type certificate (STC) may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen

Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–13–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 99–01–05, Amendment 39–10972 (63 FR 72132, December 31, 1998), currently requires the following on certain Piper airplanes that are equipped with wing lift struts:

—Repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks;

—Incorporating a ''NO STEP'' placard on the lift strut; and

—Providing the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements.

AD 99–01–05 superseded AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993). The following describes the differences between AD 93–10–06 and AD 99–01–05:

—AD 99–01–05 clarifies certain requirements of AD 93–10–06;

—The requirement of AD 93–10–06 of repetitively inspecting the lift strut forks on the Piper PA–25 series airplanes was deemed unnecessary by AD 99–01–05;

—AD 99–01–05 incorporates airplane models inadvertently omitted from AD 93–10–06;

—AD 99–01–05 requires fabricating and installing a placard on the lift strut; and

—The J–2 series airplanes were included in the Applicability of AD 93–10–06, but omitted from the Applicability of AD 99–01–05.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—The J–2 series airplanes were inadvertently omitted from AD 99–01–05;

—The actions of AD 99–01–05 should apply to the J–2 series airplanes; and

—AD action should be taken to prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper J–2 series airplanes of the same type design that are equipped with wing lift struts, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the wing lift struts for dents and corrosion and the wing lift strut forks for cracks; replacing any strut found with corrosion or dents, or forks with cracks; and repetitively replacing the wing lift strut forks. The proposed AD would also require installing a placard on the lift strut, and would provide the option of installing certain wing lift strut and wing lift strut fork assemblies, as terminating action for repetitive inspection and replacement requirements.

Cost Impact

The FAA estimates that 91 airplanes in the U.S. registry would be affected by the proposed AD.

It would take approximately 8 workhours per airplane to accomplish the proposed initial inspection, and the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $43,680, or $480 per airplane. These figures are based only on the cost of the proposed initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator would incur over the life of the airplane.

It would take approximately 4 workhours per airplane to accomplish the proposed initial wing lift strut fork replacements, and the average labor rate is approximately $60 an hour. Fork assemblies cost approximately $110 each and four are required for each airplane. Based on these figures, the total cost impact of the proposed initial wing lift strut fork replacements on U.S. operators is estimated to be $61,880, or $680 per airplane.

Airplane operators who do not incorporate the improved design wing lift strut assemblies would have to repetitively replace the wing lift strut forks. The FAA has no way of determining how many airplanes do not have the improved design wing lift strut assemblies installed and would need repetitive strut fork replacements.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The New Piper Aircraft, Inc.: Docket No. 99–CE–13–AD.

Applicability: J–2 series airplanes, serial numbers 500 through 1975, certificated in any category; that are equipped with wing lift struts.

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

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

To prevent in-flight separation of the wing from the airplane caused by wing lift struts with dents or corrosion or wing lift forks with cracks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished per AD 93–10–06, whichever occurs later, remove the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), or (a)(4), including subparagraphs, of this AD):

(1) Inspect the wing lift struts for perceptible dents (as defined in the service bulletin referenced below) and corrosion in accordance with the ''INSTRUCTIONS'' section in Part I of Piper SB No. 528D, dated October 19, 1990.

(i) If no perceptible dents are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If a perceptible dent is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) or (a)(4) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with the SB referenced above. Reinspect the lift struts at intervals not to exceed 24 calendar months.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3) or (a)(4) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitutes terminating action for the inspection and replacement requirements of both paragraphs (a) and (b) of this AD.

(b) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection, whichever is later, remove the wing lift strut forks and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2) or (b)(3); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks for cracks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) *If cracks are found on any wing lift strut fork:* Prior to further flight;

(B) *If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or

(C) *If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections:* Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all subparagraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D (or FAA-approved equivalent part numbers), on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB.

(i) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(c) If holes are drilled in wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraphs (a)(1) or (a)(2), including all subparagraphs, of this AD.

(d) Within 1 calendar month after the effective date of this AD and thereafter prior

to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install ''NO STEP'' decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement ''NO STEP'' approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters utilizing a color that contrasts with the color of the airplane.

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

(f) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Appendix to Docket No. 99–CE–13–AD; Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/−0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

- **Note:** Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''
- **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements.** Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/−0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

- **Note:** A reading shall not exceed .041-inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

- **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.

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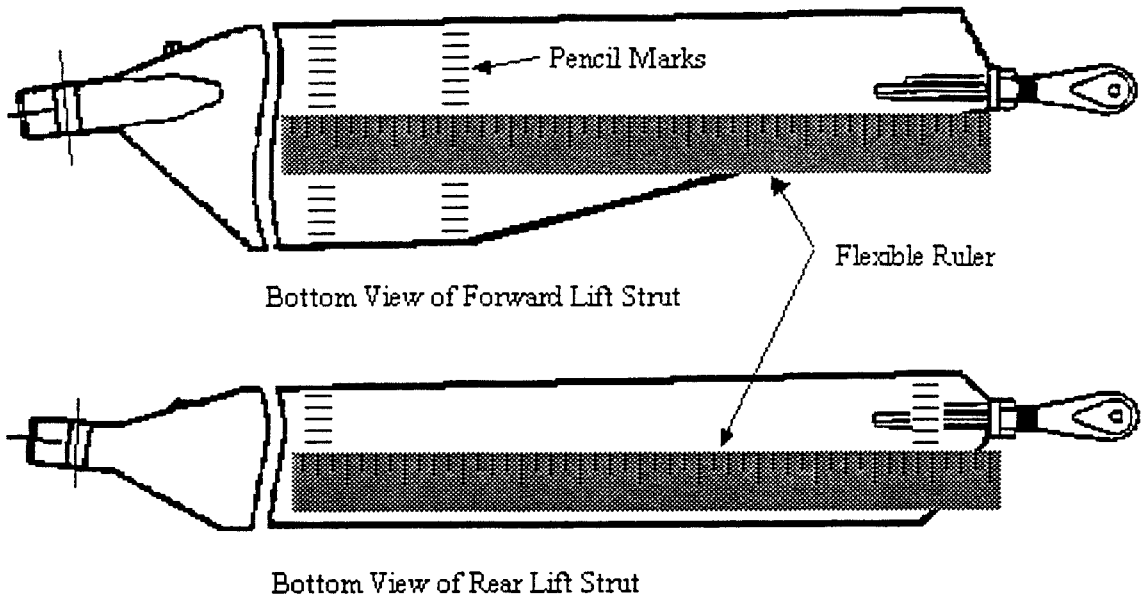

Figure 1

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17553 Filed 7–9–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–113–AD]

RIN 2120–AA64

Airworthiness Directives; Overland Aviation Services Fire Extinguishing System Bottle Cartridges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Overland Aviation Services fire extinguishing system bottle cartridges that were distributed during a certain time period. The proposed AD would require removing from service any of these fire extinguishing system bottle cartridges. The proposed AD is the result of several incidents where the fire extinguishing system bottle cartridges activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold. The actions specified by the proposed AD are intended to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

DATES: Comments must be received on or before September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–113–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri; telephone: (314) 428–2062; facsimile: (314) 428–3403. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Janusz, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4148; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–113–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–113–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of several incidents where fire extinguishing system bottle cartridges that were manufactured by Overland Aviation Services activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold.

The fire extinguishing system bottle cartridges are considered critical parts. The fire extinguishing system is only required to function after a failure or series of failures have occurred and developed into the potential for a fire. In the above-referenced incidents, the fire extinguishing system could not be relied on because of the potential for damage to the fire extinguishing system components that could result from a cartridge activating with excessive energetic force. Overland Aviation Services distributed fire extinguishing system bottle cartridges that could incorporate this problem from April 1, 1996, through September 15, 1997.

Relevant Service Information

Overland Aviation Services issued Service Bulletin 22–09–97, not dated, which contains information pertaining to the above-referenced condition.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in Overland Aviation Services fire extinguishing system bottle cartridges that were distributed from April 1, 1996, through September 15, 1997, the FAA is proposing AD action. The proposed AD would require removing from service any of these fire extinguishing system bottle cartridges.

Compliance Time of the Proposed AD

The unsafe condition described in this proposed AD is not a direct result of aircraft operation. The fire extinguishing system bottle cartridges could activate with excessive energetic force the first time they are used during flight. This could occur on an aircraft with 50 hours time-in-service (TIS) or an aircraft with 10,000 hours TIS. Therefore, to assure that the unsafe condition is corrected in a timely manner, the proposed AD is utilizing a compliance time of 120 days after the effective date of the AD.

Cost Impact

The FAA estimates that 5,128 fire extinguishing system bottle cartridges would be affected by the proposed AD, that it would take approximately 8 workhours per cartridge to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Warranty credit from Overland Aviation Services will cover the cost of replacement cartridges. Based on these

figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,461,440, or $480 per fire extinguishing system bottle cartridge.

Overland Aviation Services reports that 2,100 parts have been removed from service. This reduces the cost impact of the proposed AD from $2,504,640, to $1,453,440.

The number of cartridges utilized varies from airplane to airplane. The FAA has no way of determining which airplanes have the affected fire extinguishing system bottle cartridges incorporated. Therefore, the FAA has presented the cost impact of the proposed AD based upon the number of fire extinguishing system bottle cartridges manufactured instead of the number of airplanes affected.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Overland Aviation Services: Docket No. 98–CE–113–AD.

Applicability: The fire extinguishing system bottle cartridges presented below that were distributed from April 1, 1996, through September 15, 1997, and are installed on, but not limited to the following aircraft:

Overland Aviation Services (OAS) cartridge part Nos.	Walter Aerospace (WKA) fire extinguishing system (Firex) bottle assembly basic part No.	Make/model of applicable aircraft	Cartridge lot No.
OA47200	472073, 472420, 472467, 897885, 897878, 899170.	Aerospatiale ATR72 Series ATR42–200, –300, – 320. Embraer EMB–120 Series.	SBI 1–1 SBI 1–2
OA841155	898768, 890532, 890598, 890599, 891070, 891147, 891814, 893675, 892308.	Boeing 707–100, –100B Series, –300 Series, 720B. McDonnell Douglas DC–8, –8F Series. Lockheed 382, 382E, 382F, 382G. Sabreliner NA–265 Series. Bell 204B.	SBI 1–3 OAS 1–2
OA873364	893523, 893524, 893456, 893726, 472049, 472162, 895353, 894703, 472389, 472390, 893572, 897770, 898066, 898006.	Gulfstream G–1159, G–1159B, G–1159A Cessna 425, 441, 550, S550, 551, 552. Fokker F.28 Series. SAAB 340 Series. Bell 412.	SBI 1–3
OA873571	893244, 899827, 899927, 892807, 892857	Boeing 707–100, –100B Series, –300 Series, 720B. McDonnell Douglas DC–8, –8F Series, DC–9 Series. Lockheed 382, 382E, 382F, 382G.	SBI 2–2
OA876296	895240, 895678, 895683, 895564, 898150, 472603, 472602, 473598, 896054, 895877.	McDonnell Douglas DC–9–81, DC–9–82, DC–9–83, DC–10 Series. Airbus A300 Series.	SBI 1–1 OAS 1–1
OA876299	895656, 895752, 895848, 897785, 897797, 897798, 472268, 896166, 896165.	Lockheed L–1011 Series	SBI 1–1
OA897776	897869, 899486, 897899, 897885, 899170, 472258, 472428, 899074, 897775, 899066.	Canadair CL–600–1A11, CL–600–2A12, CL–600–2B16. Embraer EMB–120, EMB–120RT Sikorsky S–76A SAAB 340 Series	SBI 1–4 SBI 1–15 SBI 1–16 OAS 1–1

Note 1: Overland Aviation Services distributed the affected fire extinguishing system bottle cartridges from April 1, 1996, through September 15, 1997. Those cartridges incorporated on the aircraft prior to April 1, 1996, would not be affected by this AD. This AD allows the aircraft owner or pilot to check the maintenance records to determine whether the fire extinguishing system bottle cartridges were installed since April 1, 1996. See paragraph (d) of this AD for authorization.

Note 2: Procurement records may show if the owner/operator has ever bought affected parts, for spares or time replacements, for airplane installation, or to support a repair shop. These could be cross-referenced to the lots that are suspect. Additionally, a review of procurement records with respect to the part number, lot number, and distribution date of the suspect lots would also reduce the

owners'/operators' workload of having to examine all applicable Air Transport Association (ATA) codes in the databases. A search of the maintenance/inspection records and logbooks of a specific airplane make and model and serial number could be beneficial.

Note 3: The fire extinguishing system parts are installed up to a hex wrenching flat on the cartridge body. These wrenching flats have the part number, lot number, and date of manufacture stamped on them, as well as safety wire holes. When installed, the safety wire will probably cover up at least one bit of the above information. Inspecting the wrenching flats could help determine whether the fire extinguishing system bottle cartridges contain an affected part number or lot number.

Note 4: This AD applies to each aircraft that incorporates one of the fire extinguishing system bottle cartridges identified in the preceding applicability provision, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

Note 5: ''Unless already accomplished'' credit may be extended to the records check allowed by this AD provided that the records are checked to cover any time period that has elapsed since the previous check.

To prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly, accomplish the following:

(a) Within the next 120 calendar days after the effective date of this AD, remove from service any fire extinguishing system bottle cartridge referenced in the Applicability section of this AD, and replace it with an FAA-approved fire extinguishing system bottle cartridge that is not of the affected part numbers.

(b) As of the effective date of this AD, no person shall install, on any aircraft, any affected Overland Aviation Services fire extinguishing system bottle cartridge that was distributed from April 1, 1996, through September 15, 1997.

(c) The FAA requests that any fire extinguishing system bottle cartridge removed from service that has not been fired or cartridges that are held in inventory be sent to the manufacturer for analysis. Contact Jeff Janusz, Aerospace Engineer, at the FAA,Wichita Aircraft Certification Office (ACO), for shipping instructions; telephone: (316) 946–4148; e:mail: *jeff.janusz@faa.gov.*

(d) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether any of the affected fire extinguishing system bottle cartridges were installed since April 1, 1996. If an affected fire extinguishing system bottle cartridge was installed prior to April 1, 1996, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Overland Aviation Services, 10271 Bach Boulevard, St. Louis, Missouri; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 2, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–17552 Filed 7–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

RIN 0703–AA54

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy proposes to revise regulations concerning the professional conduct of attorneys practicing law under the cognizance and supervision of the Judge Advocate General of the Navy. This revision will ensure the professional supervision of judge advocates, military trial and appellate military judges, and other lawyers who practice in Department of the Navy proceedings and other legal programs.

DATES: Submit comments on or before September 10, 1999.

ADDRESSES: Send comments to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066.

FOR FURTHER INFORMATION CONTACT: Major Ed McDonnell, U.S. Marine Corps, 703–604–8228.

SUPPLEMENTARY INFORMATION: The Judge Advocate General of the Navy (JAG) is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in Department of the Navy proceedings governed by the Uniform Code of Military Justice and the Manual for Courts-Martial. See, 10 U.S.C. 806, 806a, 826, 827, and Rule for Courts-Martial 109. The JAG has further responsibilities to supervise the provision of legal advice and related services in the Department of the Navy's Legal Assistance Program and such other legal programs as assigned by the Secretary of the Navy. See, 10 U.S.C. 1044; Article 0331, U.S. Navy Regulations (1990); Secretary of the Navy Instruction 5430.27A. To discharge these responsibilities, the JAG has prescribed Rules of Professional Conduct (JAG Rules) for attorneys providing legal services or otherwise practicing in proceedings under JAG cognizance and supervision. These Rules, and the procedures by which JAG investigates and resolves allegations of professional misconduct, are found at 32 CFR part 776.

The Department of the Navy is proposing a complete revision of 32 CFR part 776. While there are numerous administrative changes in the revised text, the most significant substantive proposals are as follows:

1. The terms ''covered attorney,'' ''covered United States Government (USG) attorney,'' and ''covered non-USG attorney'' are introduced and incorporated throughout part 776. Currently, subpart B to 32 CFR part 776 uses the generic term ''judge advocate'' in fashioning rules of professional conduct, with the proviso that this term applies to all other attorneys who practice under the supervision of the JAG (to include civilian attorneys defending individual clients in courts-

martial or administrative separation proceedings). See current § 776.13(a)(2). The proposal would utilize the new terms to define better to whom, when, and how the JAG Rules apply. See proposed § 776.2.

2. Addition of a specific rule prohibiting sexual relations between covered attorneys and their clients or other principals to the particular matter which is the subject of the representation. This proposed rule is modeled, in significant part, on Rule 1.18 of the Revised Rules of Professional Conduct of the North Carolina State Bar. See proposed § 776.36.

3. Addition of a specific rule that requires all covered USG attorneys to remain in good standing with state licensing authorities. The rule would further ensure that covered non-USG attorneys representing individual clients in court-martial or administrative separation proceedings are members in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law. See proposed § 776.71.

4. Addition of a procedure wherein the JAG may impose an interim suspension of a covered attorney where there is probable cause to believe that the attorney has committed misconduct and poses a substantial threat of irreparable harm to clients or the orderly administration of military justice. See proposed § 776.82.

5. Removal of subpart D, Outside Part-Time Practice of Naval Service Attorneys. This subpart is limited in application to covered USG attorneys, and as an internal administrative rule which does not affect the public, need not be published in the CFR. Covered USG attorneys who wish to engage in the part-time practice of law, outside of their official Department of the Navy responsibilities, must still obtain JAG approval, notice of which is contained in proposed § 776.11. Additional information for covered USG attorneys is available in JAG Instruction 5803.1 (series).

The JAG Rules contained in subpart B are based upon the American Bar Association's (ABA's) Model Rules of Professional Conduct. Like the ABA's Model Rules, each JAG Rule has accompanying commentary which explains and illustrates the meaning and purpose of the Rule. This commentary for the JAG Rules is not reprinted in subpart B. A complete version of the JAG Rules, with accompanying commentary, may be found in JAG Instruction 5803.1 (series), copies of which may be obtained from the address indicated.

Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Revision of this part does not meet the definition of ''significant regulatory action'' for purposes of E.O. 12866.

Regulatory Flexibility Act

Revision of this part will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

Revision of this part does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

List of Subjects in 32 CFR Part 776

Conflict of interests, Lawyers, Legal services, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Navy proposes to revise 32 CFR part 776 to read as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

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Subpart D—[Reserved]

Authority: 10 U.S.C. 806, 806a, 826, 827; Manual for Courts-Martial, United States, 1998; U.S. Navy Regulations, 1990; Secretary of the Navy Instruction 5430.27(series), Responsibility of the Judge Advocate General for Supervision of Certain Legal Services.

Subpart A—General

§ 776.1 Purpose.

In furtherance of the authority citations (which, if not found in local libraries, are available from the Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066), which require the Judge Advocate General of the Navy (JAG) to supervise the performance of legal services under JAG cognizance throughout the Department of the Navy (DON), this part is promulgated:

(a) To establish Rules of Professional Conduct (subpart B of this part) for attorneys subject to this part;

(b) To establish procedures (subpart C of this part) for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, whether arising from professional legal activities in DON proceedings and matters, or arising from other, non-U.S. Government related professional legal activities or personal misconduct which suggests the attorney is ethically, professionally, or morally unqualified to perform legal services within the DON; and

(c) To ensure quality legal services at all proceedings under the cognizance and supervision of the JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to, all ''covered attorneys.''

(b) *Covered attorneys* include:

(1) The following U.S. Government (USG) attorneys, referred to, collectively, as ''covered USG attorneys'' throughout this part:

(i) All active-duty Navy judge advocates (designator 2500 or 2505) or Marine Corps judge advocates (MOS 4402 or 9914).

(ii) All active-duty judge advocates of other U.S. armed forces who practice law or provide legal services under the cognizance and supervision of the JAG.

(iii) All civil service and contracted civilian attorneys who practice law or perform legal services under the cognizance and supervision of the JAG.

(iv) All Reserve or Retired judge advocates of the Navy or Marine Corps (and any other U.S. armed force), who, while performing official DON duties, practice law or provide legal services under the cognizance and supervision of the JAG.

(v) All other attorneys appointed by JAG (or the Director, Judge Advocate (JA) Division, Headquarters Marine Corps (HQMC), in Marine Corps matters) to serve in billets or to provide legal services normally provided by Navy or Marine Corps judge advocates. This policy applies to officer and enlisted reservists, to active-duty personnel, and to any other personnel who are licensed to practice law by any Federal or state authorities, but who are not members of the Judge Advocate General's Corps or who do not hold the 4402 or 9914 designation in the Marine Corps.

(2) The following non-U.S. Government attorneys, referred to, collectively, as ''covered non-USG attorneys'' throughout this part: All civilian attorneys representing individuals in any matter for which JAG is charged with supervising the provision of legal services. These matters include, but are not limited to, courts-martial, administrative separation boards or hearings, and disability evaluation proceedings.

(3) The term *covered attorney* does not include those civil service or civilian attorneys who practice law or perform legal services under the cognizance and supervision of the General Counsel of the Navy.

(c) Professional or personal misconduct unrelated to a covered attorney's DON activities, while normally outside the ambit of these rules, may be reviewed under procedures established in subpart C of this part and may provide the basis for decisions by the JAG regarding the covered attorney's continued qualification to provide legal services in DON matters.

(d)(1) Although the rules in subpart B of this part do not apply to non-attorneys, they do define the type of ethical conduct that the public and the military community have a right to expect from DON legal personnel. Accordingly, subpart B of this part shall serve as a model of ethical conduct for the following personnel when involved with the delivery of legal services under the supervision of the JAG:

(i) Navy legalmen and Marine Corps legal administrative officers, legal service specialists, and legal services reporters (stenotype);

(ii) Limited duty officers (LAW);

(iii) Legal interns; and

(iv) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court reporters, and others holding similar positions.

(2) Covered USG attorneys who supervise non-attorney DON employees are responsible for their ethical conduct to the extent provided for in § 776.55.

§ 776.3 Policy.

(a) Covered attorneys shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Whether conduct or failure to act constitutes a violation of the professional duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. Rules contained in subpart B of this part are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Department of Defense Joint Ethics Regulation, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), and the general precepts of ethical conduct to which all DON servicemembers and employees are expected to adhere. Similarly, action taken per this part is not supplanted or barred by, and does not, even if the underlying misconduct is the same, supplant or bar the following action from being taken by authorized officials:

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual for Courts-Martial, U.S. Navy Regulations, or under other applicable authority.

(c) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation (subpart C of this part) stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this part.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each covered USG attorney unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) Covered USG attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority. Wrongfully establishing an attorney-client relationship may subject the attorney to discipline administered per this part. See § 776.21.

(c) Employment of a non-USG attorney by an individual client does not alter the professional responsibilities of a covered USG attorney detailed or otherwise assigned by competent authority to represent that client.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, regulations, or this part, the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all other covered USG attorneys performing judicial functions under JAG supervision within the DON.

§ 776.6 Conflict.

To the extent that a conflict exists between this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, this part will govern the conduct of covered attorneys engaged in legal functions under JAG cognizance and supervision. Specific and significant instances of conflict between the rules contained in subpart B of this part and the rules of other jurisdictions shall be reported promptly to the Rules Counsel (see § 776.9), via the supervisory attorney. See § 776.53.

§ 776.7 Reporting requirements.

Covered USG attorneys shall report promptly to the Rules Counsel any disciplinary or administrative action, including initiation of investigation, by any licensing authority or Federal, State, or local bar, possessing the power to revoke, suspend, or in any way limit the authority to practice law in that jurisdiction, upon himself, herself, or another covered attorney. Failure to report such discipline or administrative action may subject the covered USG attorney to discipline administered per this part. See § 776.71.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Vice Commander, Naval Legal Service Command (NLSC); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, JA Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be the AJAG for Military Justice. The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternate members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory opinions to JAG regarding application of rules contained in subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to covered attorneys about the propriety of proposed courses of action. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B, then no adverse action under this part may be taken against a covered attorney who acts consistent with the Committee's advice.

(4) The Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

(c) *Limitation.* The Committee will not normally provide ethics advice or opinions concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct, etc.) that are then the subject of litigation.

§ 776.9 Rules Counsel.

Appointed by JAG to act as special assistants for the administration of this part, the Rules Counsel derive authority from JAG and, as detailed in this part, have ''by direction'' authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel:

(a) Director, JA Division, HQMC, for cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under his cognizance; and

(b) AJAG for Civil Law, in all other cases.

§ 776.10 Informal ethics advice.

(a) *Advisors.* Covered attorneys may seek informal ethics advice either from the officers named below or from supervisory attorneys in the field. Within the Office of the JAG and HQMC, the following officials are designated to respond, either orally or in writing, to informal inquiries concerning this part in the areas of practice indicated:

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Director, Legal Assistance Division: legal assistance matters;

(4) Deputy Director, JA Division, HQMC: cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC; and

(5) Head, Standards of Conduct/ Government Ethics Branch, Administrative Law Division: All other matters.

(b) *Limitation.* Informal ethics advice will not normally be provided by JAG/ HQMC advisors concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct) that are then the subject of litigation.

(c) *Written advice.* A request for informal advice does not relieve the requester of the obligation to comply with subpart B of this part. Although covered attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally accountable for their professional conduct. If, however, an attorney receives written advice on an ethical matter after full disclosure of all relevant facts and reasonably relies on such advice, no adverse action under this part will be taken against the attorney. Written advice may be sought from either a supervisory attorney or the appropriate advisor in paragraph (a) of this section. JAG is not bound by unwritten advice or by advice provided by personnel who are not supervisory attorneys or advisors. See § 776.54.

§ 776.11 Outside part-time practice of law.

A covered USG attorney's primary professional responsibility is to the executive agency to which assigned, and he or she is expected to devote the required amount of effort and time to satisfactorily accomplish assigned duties. The outside practice of law, therefore, must be carefully monitored. Covered USG attorneys who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Failure to obtain permission before engaging in the outside practice of law may subject the covered USG attorney to administrative or disciplinary action, including professional sanctions administered per subpart C of this part. Covered USG attorneys may obtain

further details in JAGINST 5803.1 (series). This requirement does not apply to non-USG attorneys, or to Reserve or Retired judge advocates unless serving on active-duty for more than 30 consecutive days.

§ 776.12 Maintenance of files.

Ethics complaint records shall be maintained by the Administrative Law Division, Office of the Judge Advocate General, and, in the case of Marine records, by the Judge Advocate Research and Civil Law Branch, JA Division, HQMC.

(a) Requests for access to such records should be referred to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General (Code 13), Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066, or to Head, Judge Advocate Research and Civil Law Branch, JA Division, Headquarters Marine Corps, Washington, DC 20380–0001, as appropriate.

(b) Local command files regarding professional responsibility complaints will not be maintained. Commanding officers and other supervisory attorneys may, however, maintain personal files but must not share their contents with others.

§§ 776.13–§ 776.17 [Reserved]

Subpart B—Rules of Professional Conduct

§ 776.18 Preamble.

(a) A covered USG attorney is a representative of clients, an officer of the legal system, an officer of the Federal Government, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the DON and to individual clients. The Rules of Professional Conduct contained in this subpart govern the ethical conduct of covered attorneys practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the DON.

(b) This subpart not only addresses the professional conduct of judge advocates, but also applies to all other covered attorneys who practice under the cognizance and supervision of the JAG. See § 776.2.

(c) All covered attorneys are subject to professional disciplinary action imposed by the JAG for violation of the Rules contained in this subpart. Action by the JAG does not prevent other Federal, state, or local bar associations or other licensing authorities from taking professional disciplinary or other administrative action for the same or similar acts.

§ 776.19 Principles.

The Rules of this subpart are based on the following principles. Interpretation of this subpart should flow from common meaning. To the extent that any ambiguity or conflict exists, this subpart should be interpreted consistent with these general principles.

(a) Covered attorneys shall:

(1) Obey the law and military regulations, and counsel clients to do so.

(2) Follow all applicable ethics rules.

(3) Protect the legal rights and interests of clients, organizational and individual.

(4) Be honest and truthful in all dealings.

(5) Not derive personal gain, except as authorized, for the performance of legal services.

(6) Maintain the integrity of the legal profession.

(b) Ethical rules should be consistent with law. If law and ethics conflict, the law prevails unless an ethical rule is constitutionally based.

(c) The military criminal justice system is a truth-finding process consistent with constitutional law.

§ 776.20 Competence.

(a) *Competence.* A covered attorney shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a covered USG attorney for a particular assignment shall be made by a supervising attorney before case or issue assignments; however, assigned attorneys may consult with supervisors concerning competence in a particular case.

(b) [Reserved]

§ 776.21 Establishment and scope of representation.

(a) *Establishment and scope of representation.* (1) Formation of attorney-client relationships by covered USG attorneys with, and representation of, clients is permissible only when the attorney is authorized to do so by competent authority. Military Rule of Evidence 502, the Manual of the Judge Advocate General (JAG Instruction 5800.7 (series)), and the Naval Legal Service Office and Trial Service Office Manual, define when an attorney-client relationship is formed between a covered USG attorney and a client servicemember, dependent, or employee.

(2) Generally, the subject matter scope of a covered attorney's representation will be consistent with the terms of the assignment to perform specific representational or advisory duties. A covered attorney shall inform clients at the earliest opportunity of any limitations on representation and professional responsibilities of the attorney towards the client.

(3) A covered attorney shall follow the client's well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

(4) A covered attorney's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(5) A covered attorney shall not counsel or assist a client to engage in conduct that the attorney knows is criminal or fraudulent, but a covered attorney may discuss the legal and moral consequences of any proposed course of conduct with a client, and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(b) [Reserved]

§ 776.22 Diligence.

(a) *Diligence.* A covered attorney shall act with reasonable diligence and promptness in representing a client, and shall consult with a client as soon as practicable and as often as necessary upon being assigned to the case or issue.

(b) [Reserved]

§ 776.23 Communication.

(a) *Communication.* (1) A covered attorney shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(2) A covered attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(b) [Reserved]

§ 776.24 Fees.

(a) *Fees.* (1) A covered USG attorney shall not accept any salary, fee, compensation, or other payments or benefits, directly or indirectly, other than Government compensation, for services provided in the course of the covered USG attorney's official duties or employment.

(2) A covered USG attorney shall not accept any salary or other payments as compensation for legal services

rendered, by that covered USG attorney in a private capacity, to a client who is eligible for assistance under the DON Legal Assistance Program, unless so authorized by the JAG. This rule does not apply to Reserve or Retired judge advocates not then serving on extended active-duty.

(3) A Reserve or Retired judge advocate, whether or not serving on extended active-duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the attorney's official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless so authorized by the JAG.

(4) A covered USG attorney shall not accept any payments or benefits, actual or constructive, directly or indirectly, for making a referral of a client in the course of the covered USG attorney's official duties or employment.

(5) Covered non-USG attorneys may charge fees. Fees shall be reasonable. Factors considered in determining the reasonableness of a fee include the following:

(i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;

(iii) the fee customarily charged in the locality for similar legal services;

(iv) The amount involved and the results obtained;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client;

(vii) The experience, reputation, and ability of the attorney or attorneys performing the services; and

(viii) Whether the fee is fixed or contingent.

(6) When the covered non-USG attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(7) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (a)(8) of this section or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the covered non-USG attorney in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the covered non-USG attorney shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(8) A covered non-USG attorney shall not enter into an arrangement for, charge, or collect a contingent fee for representing an accused in a criminal case.

(9) A division of fees between covered non-USG attorneys who are not in the same firm may be made only if:

(i) The division is in proportion to the services performed by each attorney or, by written agreement with the client, each attorney assumes joint responsibility for the representation;

(ii) The client is advised of and does not object to the participation of all the attorneys involved; and

(iii) The total fee is reasonable.

(b) *Applicability.* Paragraphs (a)(5) Through (9) of this section apply only to private civilian attorneys practicing in proceedings conducted under the cognizance and supervision of the JAG. The primary purposes of paragraphs (a)(5) Through (9) of this section are not to permit the JAG to regulate fee arrangements between civilian attorneys and their clients but to provide guidance to covered USG attorneys practicing with non-USG attorneys and to supervisory attorneys who may be asked to inquire into alleged fee irregularities. Absent paragraphs (a)(5) Through (9) of this section, such supervisory attorneys have no readily available standard against which to compare allegedly questionable conduct of a civilian attorney.

§ 776.25 Confidentiality of information.

(a) *Confidentiality of Information.* (1) A covered attorney shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A covered attorney shall reveal such information to the extent the covered attorney reasonably believes necessary to prevent the client from committing a criminal act that the covered attorney believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(3) A covered attorney may reveal such information to the extent the covered attorney reasonably believes necessary to establish a claim or defense on behalf of the covered attorney in a controversy between the covered attorney and the client, to establish a defense to a criminal charge or civil claim against the attorney based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the attorney's representation of the client.

(b) *Definition. Conduct likely to result in the significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system* include, but are not limited to: Divulging the classified location of a special operations unit such that the lives of members of the unit are placed in immediate danger; sabotaging a vessel or aircraft to the extent that the vessel or aircraft could not conduct an assigned mission, or that the vessel or aircraft and crew could be lost; and compromising the security of a weapons site such that the weapons are likely to be stolen or detonated. Paragraph (a)(2) of this section is not intended to and does not mandate the disclosure of conduct which may have a slight impact on the readiness or capability of a unit, vessel, aircraft, or weapon system. Examples of such conduct are: Absence without authority from a peacetime training exercise; intentional damage to an individually assigned weapon; and intentional minor damage to military property.

§ 776.26 Conflict of interest: General rule.

(a) *Conflict of interest: General rule.* (1) A covered attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The covered attorney reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A covered attorney shall not represent a client if the representation of that client may be materially limited by the covered attorney's responsibilities to another client or to a third person, or by the covered attorney's own interests, unless:

(i) The covered attorney reasonably believes the representation will not be adversely affected; and,

(ii) The client consents after consultation.

(3) When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(b) *Reserve judge advocates.* These conflict of interest rules only apply when Reservists are actually drilling or on active-duty for training, or, as is the case with Retirees, on extended active-duty or when performing other duties subject to JAG supervision. Therefore, unless otherwise prohibited by criminal conflict of interest statutes, Reserve or Retired attorneys providing legal services in their civilian capacity may represent clients, or work in firms whose attorneys represent clients, with interests adverse to the United States. Reserve judge advocates who, in their civilian capacities, represent persons whose interests are adverse to the DON will provide written notification to their supervisory attorney and commanding officer, detailing their involvement in the matter. Reserve judge advocates shall refrain from undertaking any official action or representation of the DON with respect to any particular matter in which they are providing representation or services to other clients.

§ 776.27 Conflict of interests: Prohibited transactions.

(a) *Conflict of interests: Prohibited transactions.* (1) Covered USG attorneys shall strictly adhere to current Department of Defense Ethics Regulations and shall not:

(i) Knowingly enter into any business transactions on behalf of, or adverse to, a client's interest which directly or indirectly relate to or result from the attorney-client relationship, or otherwise profit, directly or indirectly, through knowledge acquired during the course of the covered USG attorney's official duties;

(ii) Accept compensation or gifts in any form from a client or other person or entity, other than the U.S. Government, for the performance of official duties;

(iii) Provide any financial assistance to a client or otherwise serve in a financial or proprietorial fiduciary or bailment relationship, unless otherwise specifically authorized by competent authority; or

(iv) Make any referrals of legal or other business to any non-USG attorney or enterprise with whom the covered USG attorney has any present or expected direct or indirect personal interest; any referrals must be made strictly without regard to personal interests of the covered attorney, and special care shall be taken not to give preferential treatment to Reserve attorneys or other covered USG attorneys in their private capacities.

(2) No covered attorney shall:

(i) Use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by § 776.25 or § 776.42;

(ii) Prepare an instrument giving the covered attorney or a person related to the covered attorney as parent, child, sibling, or spouse any gift from a client, including a testamentary gift, except where the client is related to the donee;

(iii) In the case of covered non-USG attorneys, accept compensation for representing a client from one other than the client unless the client consents after consultation, there is no interference with the covered attorney's independence of professional judgment or with the attorney-client relationship, and information relating to representation of a client is protected as required by § 776.25;

(iv) Negotiate any settlement on behalf of multiple clients in a single matter unless each client provides fully informed consent;

(v) Prior to the conclusion of representation of the client, make or negotiate an agreement giving a covered attorney literary or media rights for a portrayal or account based in substantial part on information relating to representation of a client;

(vi) Represent a client in a matter directly adverse to a person whom the covered attorney knows is represented by another attorney who is related as parent, child, sibling, or spouse to the covered attorney, except upon consent by the client after consultation regarding the relationship; or

(vii) Acquire a proprietary interest in the cause of action or subject matter of litigation the covered attorney is conducting for a client.

(b) [Reserved]

§ 776.28 Conflict of interest: Former client.

(a) *Conflict of interest: Former client.* A covered attorney who has represented a client in a matter shall not thereafter:

(1) Represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation;

(2) Use information relating to the representation to the disadvantage of the former client or to the covered attorney's own advantage, except as § 776.25 or § 776.42 would permit or require with respect to a client or when the information has become generally known; or

(3) Reveal information relating to the representation except as § 776.25 or § 776.42 would permit or require with respect to a client.

(b) [Reserved]

§ 776.29 Imputed disqualification: General rule.

(a) *Imputed disqualification: General rule.* Covered USG attorneys working in the same military law office are not automatically disqualified from representing a client because any of them practicing alone would be prohibited from doing so by § 776.26, § 776.27, § 776.28, or § 776.38. Covered non-USG attorneys must consult their federal, state, and local bar rules governing the representation of multiple or adverse clients within the same office before such representation is initiated, as such representation may expose them to disciplinary action under the rules established by their licensing authority.

(b) *Representing opposing side.* (1) The circumstances of military (or Government) service may require representation of opposing sides by covered USG attorneys working in the same law office. Such representation is permissible so long as conflicts of interests are avoided and independent judgment, zealous representation, and protection of confidences are not compromised. Thus, the principle of imputed disqualification is not automatically controlling for covered USG attorneys. The knowledge, actions, and conflicts of interests of one covered USG attorney are not imputed to another simply because they operate from the same office. For example, the fact that a number of defense attorneys operate from one office and normally share clerical assistance would not prohibit them from representing co-accused at trial by court-martial. Imputed disqualification rules for non-USG attorneys are established by their individual licensing authorities and may well proscribe all attorneys from one law office from representing a co-accused, or a party with an adverse interest to an existing client, if any attorney in the same office were so prohibited.

(2) Whether a covered USG attorney is disqualified requires a functional analysis of the facts in a specific situation. The analysis should include consideration of whether the following

will be compromised: Preserving attorney-client confidentiality; maintaining independence of judgment; and avoiding positions adverse to a client. See, e.g., *U.S.* v. *Stubbs*, 23 M.J. 188 (C.M.A. 1987).

(3) Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in a particular circumstance, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which covered USG attorneys work together. A covered USG attorney may have general access to files of all clients of a military law office (e.g., legal assistance attorney) and may regularly participate in discussions of their affairs; it may be inferred that such a covered USG attorney in fact is privy to all information about all the office's clients. In contrast, another covered USG attorney (e.g., military defense counsel) may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a covered USG attorney in fact is privy to information about the clients actually served but not to information of other clients. Additionally, a covered USG attorney changing duty stations or changing assignments within a military office has a continuing duty to preserve confidentiality of information about a client formerly represented. See § 776.25 and § 776.28.7.

(4) Maintaining independent judgment allows a covered USG attorney to consider, recommend, and carry out any appropriate course of action for a client without regard to the covered USG attorney's personal interests or the interests of another. When such independence is lacking or unlikely, representation cannot be zealous.

(5) Another aspect of loyalty to a client is the general obligation of any attorney to decline subsequent representations involving positions adverse to a former client in substantially related matters. This obligation normally requires abstention from adverse representation by the individual covered attorney involved, but, in the military legal office, abstention is not required by other covered USG attorneys through imputed disqualification.

§ 776.30 Successive government and private employment.

(a) *Successive government and private employment.* (1) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney shall not represent a private client in connection with a matter in which the covered USG attorney participated personally and substantially as a public officer or employee, unless the appropriate Government agency consents after consultation. If a former covered USG attorney in a firm, partnership, or association knows that another attorney within the firm, partnership, or association is undertaking or continuing representation in such a matter:

(i) The disqualified former covered USG attorney must ensure that he or she is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom; and,

(ii) Must provide written notice promptly to the appropriate Government agency to enable it to ascertain compliance with the provisions of applicable law and regulations.

(2) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney, who has information known to be confidential Government information about a person which was acquired while a covered USG attorney, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The former covered USG attorney may continue association with a firm, partnership, or association representing any such client only if the disqualified covered USG attorney is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom.

(3) Except as the law or regulations may otherwise expressly permit, a covered USG attorney shall not:

(i) Participate in a matter in which the covered USG attorney participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the covered USG attorney's stead in the matter; or,

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially.

(4) As used in this section, the term *matter* includes:

(i) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(ii) Any other matter covered by the conflict of interest rules of the Department of Defense, DON, or other appropriate Government agency.

(5) As used in this section, the term *confidential Governmental information* means information which has been obtained under Governmental authority and which, at the time this Rule is applied, the Government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(b) [Reserved]

§ 776.31 Former judge or arbitrator.

(a) *Former judge or arbitrator.* (1) Except as stated in paragraph (a)(3) of this section, a covered USG attorney shall not represent anyone in connection with a matter in which the covered USG attorney participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(2) A covered USG attorney shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially as a judge or other adjudicative officer. A covered USG attorney serving as law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the covered USG attorney has notified the judge, other adjudicative officer, or arbitrator, and been disqualified from further involvement in the matter.

(3) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(b) [Reserved]

§ 776.32 Department of the Navy as client.

(a) *Department of Navy as client.* (1) Except when representing an individual client pursuant to paragraph (a)(6) of this section, a covered USG attorney represents the DON (or the Executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the naval service, such as the commanders of fleets, divisions, ships and other heads of activities. When a covered USG attorney is assigned to such an

organizational element and designated to provide legal services to the head of the organization, an attorney-client relationship exists between the covered attorney and the DON as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the attorney-client privilege or the rule of confidentiality for the head of the organization's own benefit but may invoke either for the benefit of the DON. In invoking either the attorney-client privilege or attorney-client confidentiality on behalf of the DON, the head of the organization is subject to being overruled by higher authority.

(2) If a covered USG attorney knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the DON or a violation of law which reasonably might be imputed to the Department, the covered USG attorney shall proceed as is reasonably necessary in the best interest of the naval service. In determining how to proceed, the covered USG attorney shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the covered USG attorney's representation, the responsibility in the naval service and the apparent motivation of the person involved, the policies of the naval service concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize prejudice to the interests of the naval service and the risk of revealing information relating to the representation to persons outside the service. Such measures shall include among others:

(i) Asking for reconsideration of the matter by the acting official;

(ii) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the naval service;

(iii) Referring the matter to, or seeking guidance from, higher authority in the chain of command including, if warranted by the seriousness of the matter, referral to the supervisory attorney assigned to the staff of the acting official's next superior in the chain of command; or

(iv) Advising the acting official that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interests for the covered USG attorney, and the covered USG attorney's responsibility is to the organization.

(3) If, despite the covered USG attorney's efforts per paragraph (a)(2) of this section, the highest authority that can act concerning the matter insists upon action or refuses to act, in clear violation of law, the covered USG attorney shall terminate representation with respect to the matter in question. In no event shall the attorney participate or assist in the illegal activity. In this case, a covered USG attorney shall report such termination of representation to the attorney's supervisory attorney or attorney representing the next superior in the chain of command.

(4) In dealing with the officers, employees, or members of the naval service a covered USG attorney shall explain the identity of the client when it is apparent that the naval service's interests are adverse to those of the officer, employee, or member.

(5) A covered USG attorney representing the naval service may also represent any of its officers, employees, or members, subject to the provisions of § 776.26 and other applicable authority. If the DON's consent to dual representation is required by § 776.26, the consent shall be given by an appropriate official of the DON other than the individual who is to be represented.

(6) A covered USG attorney who has been duly assigned to represent an individual who is subject to disciplinary action or administrative proceedings, or to provide legal assistance to an individual, has, for those purposes, an attorney-client relationship with that individual.

(b) [Reserved]

§ 776.33 Client under a disability.

(a) *Client under a disability.* (1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the covered attorney shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) A covered attorney may seek the appointment of a guardian or take other protective action with respect to a client only when the covered attorney reasonably believes that the client cannot adequately act in the client's own interest.

(b) [Reserved]

§ 776.34 Safekeeping property.

(a) *Safekeeping property.* Covered USG attorneys shall not normally hold or safeguard property of a client or third persons in connection with representational duties. See § 776.27.

(b) [Reserved]

§ 776.35 Declining or terminating representation.

(a) *Declining or terminating representation.* (1) Except as stated in paragraph (a)(3) of this section, a covered attorney shall not represent a client or, when representation has commenced, shall seek to withdraw from the representation of a client if:

(i) The representation will result in violation of the Rules contained in this subpart or other law or regulation;

(ii) The covered attorney's physical or mental condition materially impairs his or her ability to represent the client; or

(iii) The covered attorney is dismissed by the client.

(2) Except as stated in paragraph (a)(3) of this section, a covered attorney may seek to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(i) The client persists in a course of action involving the covered attorney's services that the covered attorney reasonably believes is criminal or fraudulent;

(ii) The client has used the covered attorney's services to perpetrate a crime or fraud;

(iii) The client insists upon pursuing an objective that the covered attorney considers repugnant or imprudent;

(iv) In the case of covered non-USG attorneys, the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(v) Other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal or other competent authority, a covered attorney shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a covered attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel, and surrendering papers and property to which the client is entitled and, where a non-USG attorney provided representation, refunding any advance payment of fee that has not been earned. The covered attorney may retain papers relating to the client to the extent permitted by law.

(b) [Reserved]

§ 776.36 Prohibited sexual relations.

(a) *Prohibited sexual relations.* (1) A covered attorney shall not have sexual

relations with a current client. A covered attorney shall not require, demand, or solicit sexual relations with a client incident to any professional representation.

(2) A covered attorney shall not engage in sexual relations with another attorney currently representing a party whose interests are adverse to those of a client currently represented by the covered attorney.

(3) A covered attorney shall not engage in sexual relations with a judge who is presiding or who is likely to preside over any proceeding in which the covered attorney will appear in a representative capacity.

(4) A covered attorney shall not engage in sexual relations with other persons involved in the particular case, judicial or administrative proceeding, or other matter for which representation has been established, including but not limited to witnesses, victims, co-accuseds, and court-martial or board members.

(5) For purposes of this Rule, *sexual relations* means:

(i) Sexual intercourse; or

(ii) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the covered attorney for the purpose of arousing or gratifying the sexual desire of either party.

(b) [Reserved]

§ 776.37 Advisor.

(a) *Advisor.* In representing a client, a covered attorney shall exercise independent professional judgment and render candid advice. In rendering advice, a covered attorney should refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

(b) [Reserved]

§ 776.38 Mediation.

(a) *Mediation.* (1) A covered attorney may act as a mediator between individuals if:

(i) The covered attorney consults with each individual concerning the implications of the mediation, including the advantages and risks involved, and the effect on the attorney-client confidentiality, and obtains each individual's consent to the mediation;

(ii) The covered attorney reasonably believes that the matter can be resolved on terms compatible with each individual's best interests, that each individual will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the individuals if the contemplated resolution is unsuccessful; and,

(iii) The covered attorney reasonably believes that the mediation can be undertaken impartially and without improper effect on other responsibilities the covered attorney has to any of the individuals.

(2) While acting as a mediator, the covered attorney shall consult with each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(3) A covered attorney shall withdraw as a mediator if any of the individuals so requests, or if any of the conditions stated in paragraph (a)(1) of this section is no longer satisfied. Upon withdrawal, the covered attorney shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(b) [Reserved]

§ 776.39 Evaluation for use by third persons.

(a) *Evaluation for use by third persons.* (1) A covered attorney may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(i) The covered attorney reasonably believes that making the evaluation is compatible with other aspects of the covered attorney's relationship with the client, and,

(ii) The client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 776.25.

(b) [Reserved]

§ 776.40 Meritorious claims and contentions.

(a) *Meritorious claims and contentions.* A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

(b) [Reserved]

§ 776.41 Expediting litigation.

(a) *Expediting litigation.* A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the attorney's responsibilities to tribunals.

(b) [Reserved]

§ 776.42 Candor and obligations toward the tribunal.

(a) *Candor and obligations toward the tribunal.* (1) A covered attorney shall not knowingly:

(i) Make a false statement of material fact or law to a tribunal;

(ii) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(iii) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(iv) Offer evidence that the covered attorney knows to be false. If a covered attorney has offered material evidence and comes to know of its falsity, the covered attorney shall take reasonable remedial measures; or

(v) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

(2) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by § 776.25.

(3) A covered attorney may refuse to offer evidence that the covered attorney reasonably believes is false.

(4) In an ex parte proceeding, a covered attorney shall inform the tribunal of all material facts known to the covered attorney which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) [Reserved]

§ 776.43 Fairness to opposing party and counsel.

(a) *Fairness to opposing party and counsel.* A covered attorney shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A covered attorney shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(4) In trial, allude to any matter that the covered attorney does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(5) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(i) The person is a relative, an employee, or other agent of a client; and

(ii) The covered attorney reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(b) [Reserved]

§ 776.44 Impartiality and decorum of the tribunal.

(a) *Impartiality and decorum of the tribunal.* A covered attorney shall not:

(1) Seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law or regulation;

(2) Communicate ex parte with such a person except as permitted by law or regulation; or

(3) Engage in conduct intended to disrupt a tribunal.

(b) [Reserved]

§ 776.45 Extra-tribunal statements.

(a) *Extra-tribunal statements.* (1) A covered attorney shall not make an extrajudicial statement about any person or case pending investigation or adverse administrative or disciplinary proceedings that a reasonable person would expect to be disseminated by means of public communication if the covered attorney knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.

(2) A statement referred to in paragraph (a)(1) of this section ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, and the statement relates to:

(i) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, victim, or witness, or the identity of a victim or witness, or the expected testimony of a party, suspect, victim, or witness;

(ii) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement;

(iii) The performance or results of any forensic examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(iv) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action;

(v) Information the covered attorney knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of materially prejudicing an impartial proceeding;

(vi) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty; or

(vii) The credibility, reputation, motives, or character of civilian or military officials of the Department of Defense.

(3) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (vii) of this section, a covered attorney involved in the investigation or litigation of a matter may state without elaboration:

(i) The general nature of the claim, offense, or defense;

(ii) The information contained in a public record;

(iii) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law or regulation, the identity of the persons involved;

(iv) The scheduling or result of any step in litigation;

(v) A request for assistance in obtaining evidence and information necessary thereto;

(vi) A warning of danger concerning the behavior of the person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(vii) In a criminal case, in addition to paragraphs (a)(3)(i) through (vi) of this section:

(A) The identity, duty station, occupation, and family status of the accused;

(B) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time, and place of apprehension; and

(D) The identity of investigating and apprehending officers or agencies and the length of the investigation.

(4) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (vii) of this section, a covered attorney may make a statement that a reasonable covered attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the covered attorney or the attorney's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(5) The protection and release of information in matters pertaining to the DON is governed by such statutes as the Freedom of Information Act and the Privacy Act, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released (e.g., the Manual of the Judge Advocate General).

(b) [Reserved]

§ 776.46 Attorney as witness.

(a) *Attorney as witness.* (1) A covered attorney shall not act as advocate at a trial in which the covered attorney is likely to be a necessary witness except when:

(i) The testimony relates to an uncontested issue;

(ii) The testimony relates to the nature and quality of legal services rendered in the case; or

(iii) Disqualification of the covered attorney would work substantial hardship on the client.

(2) A covered attorney may act as advocate in a trial in which another attorney in the covered attorney's office is likely to be called as a witness, unless precluded from doing so by § 776.26 or § 776.28.

(b) [Reserved]

§ 776.47 Special responsibilities of a trial counsel.

(a) *Special responsibilities of a trial counsel.* A trial counsel shall:

(1) Recommend to the convening authority that any charge or

specification not warranted by the evidence be withdrawn;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(4) Make timely disclosure to the defense of all evidence or information known to the trial counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the trial counsel, except when the trial counsel is relieved of this responsibility by a protective order or regulation;

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the trial counsel from making an extrajudicial statement that the trial counsel would be prohibited from making under § 776.45; and

(6) Except for statements that are necessary to inform the public of the nature and extent of the trial counsel's actions and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.

(b) *Role of the trial counsel.* (1) The trial counsel represents the United States in the prosecution of special and general courts-martial. See Article 38(a), UCMJ, and R.C.M. 103(16), 405(d)(3)(A), and 502(d)(5). Accordingly, a trial counsel has the responsibility of administering justice and is not simply an advocate. This responsibility carries with it specific obligations to see that the accused is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Paragraph (a)(1) of this section recognizes that the trial counsel does not have all the authority vested in modern civilian prosecutors. The authority to convene courts-martial, and to refer and withdraw specific charges, is vested in convening authorities. Trial counsel may have the duty, in certain circumstances, to bring to the court's attention any charge that lacks sufficient evidence to support a conviction. See *United States* v. *Howe,* 37 M.J. 1062 (NMCMR 1993). Such action should be undertaken only after consultation with a supervisory attorney and the convening authority. See also § 776.42, governing ex parte proceedings. Applicable law may require other measures by the trial counsel. Knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of § 776.69.

(2) The ''ABA Standards for Criminal Justice: The Prosecution Function,'' (3rd ed. 1993), has been used by appellate courts in analyzing issues concerning trial counsel conduct. To the extent consistent with this part, the ABA standards may be used to guide trial counsel in the prosecution of criminal cases. See *United States* v. *Howe,* 37 M.J. 1062 (NMCRS 1993); *United States* v. *Dancy,* 38 M.J. 1 (CMA 1993); *United States* v. *Hamilton,* 41 M.J. 22 (CMA 1994); *United States* v. *Meek,* 44 M.J. 1 (CMA 1996).

§ 776.48 Advocate in nonadjudicative proceedings.

(a) *Advocate in nonadjudicative proceedings.* A covered attorney representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of § 776.42, § 776.43, and § 776.44.

(b) [Reserved]

§ 776.49 Truthfulness in statements to others.

(a) *Truthfulness in statements to others.* In the course of representing a client a covered attorney shall not knowingly;

(1) Make a false statement of material fact or law to a third person; or

(2) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 776.25.

(b) [Reserved]

§ 776.50 Communication with person representated by counsel.

(a) *Communication with person represented by counsel.* In representing a client, a covered attorney shall not communicate about the subject of the representation with a party the covered attorney knows to be represented by another attorney in the matter, unless the covered attorney has the consent of the other attorney or is authorized by law to do so.

(b) [Reserved]

§ 776.51 Dealing with an unrepresented person.

(a) *Dealing with an unrepresented person.* When dealing on behalf of a client with a person who is not represented by counsel, a covered attorney shall not state or imply that the covered attorney is disinterested. When the covered attorney knows or reasonably should know that the unrepresented person misunderstands the covered attorney's role in the matter, the covered attorney shall make reasonable efforts to correct the misunderstanding.

(b) [Reserved]

§ 776.52 Respect for rights of third persons.

(a) *Respect for rights of third persons.* In representing a client, a covered attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) [Reserved]

§ 776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.

(a) *Responsibilities of the Judge Advocate General and supervisory attorneys.* (1) The JAG and supervisory attorneys shall make reasonable efforts to ensure that all covered attorneys conform to this part.

(2) A covered attorney having direct supervisory authority over another covered attorney shall make reasonable efforts to ensure that the other attorney conforms to this part.

(3) A supervisory attorney shall be responsible for another subordinate covered attorney's violation of this part if:

(i) The supervisory attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory attorney has direct supervisory authority over the other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained and is competent to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved]

§ 776.54 Responsibilities of a subordinate attorney.

(a) *Responsibilities of a subordinate attorney.* (1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not

inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See § 776.10.

(b) [Reserved]

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) *Responsibilities regarding non-attorney assistants.* With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved]

§ 776.56 Professional independence of a covered USG attorney.

(a) *Professional independence of a covered USG attorney.* (1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney's status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b) *Loyalty to individual client.* (1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney's personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney's professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate's training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) *Unauthorized practice of law.* A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) *Practice of law under JAG authorizaton.* Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney's performance of legal duties pursuant to a military department's authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney's duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See § 776.55. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) *Bar admission and disciplinary matters.* A covered attorney, in connection with any application for bar admission, appointment as a judge advocate, employment as a civilian USG attorney, certification by the JAG or his designee, or in connection with any disciplinary matter, shall not:

(1) Knowingly make a false statement of fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this section does not require disclosure of information otherwise protected by § 776.25.

(b) *Providing information.* The duty imposed by this section extends to covered attorneys and other attorneys seeking admission to a bar, application for appointment as a covered USG attorney (military or civilian) or certification by the JAG or his designee. Hence, if a person makes a false statement in connection with an application for admission or certification (e.g., misstatement by a civilian attorney before a military judge regarding qualifications under Rule for Courts-Martial 502), it may be the basis

for subsequent disciplinary action if the person is admitted or certified, and in any event may be relevant in a subsequent admission application. The duty imposed by this section applies to a covered attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a covered attorney to make a knowing misrepresentation or omission in connection with a disciplinary investigation of the covered attorney's own conduct. This section also requires affirmative clarification of any misunderstanding on the part of the admissions, certification, or disciplinary authority of which the person involved becomes aware.

§ 776.67 Judicial and legal officers.

(a) *Judicial and legal officers.* A covered attorney shall not make a statement that the covered attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved]

§ 776.68 Reporting professional misconduct.

(a) *Reporting professional misconduct.* (1) A covered attorney having knowledge that another covered attorney has committed a violation of this part that raises a substantial question as to that covered attorney's honesty, trustworthiness, or fitness as a covered attorney in other respects, shall report such violation in accordance with the procedures set forth in subpart C of this part.

(2) A covered attorney having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall report such violation in accordance with the procedures set forth in subpart C of this part.

(3) This Rule does not require disclosure of information otherwise protected by § 776.25.

(b) [Reserved]

§ 776.69 Misconduct.

(a) *Misconduct.* It is professional misconduct for a covered attorney to:

(1) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the covered attorney's honesty, trustworthiness, or fitness as an attorney in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b)*Responsibilities.* (1) Judge advocates hold a commission as an officer in the Navy or Marine Corps and assume legal responsibilities going beyond those of other citizens. A judge advocate's abuse of such commission can suggest an inability to fulfill the professional role of judge advocate and attorney. This concept has similar application to civilian USG attorneys.

(2) Covered non-USG attorneys, Reservists, and Retirees (acting in their civilian capacity), like their active-duty counterparts, are expected to demonstrate model behavior and exemplary integrity at all times. JAG may consider any and all derogatory or beneficial information about a covered attorney, for purposes of determining the attorney's qualification, professional competence, or fitness to practice law in DON matters, or to administer discipline under this part. Such consideration shall be made, except in emergency situations necessitating immediate action, according to the procedures established in subpart C of this part.

§ 776.70 Jurisdiction.

(a) *Jurisdiction.* All covered attorneys, as defined in § 776.2, shall be governed by this part.

(b) *Applicability.* (1) Many covered USG attorneys practice outside the territorial limits of the jurisdiction in which they are licensed. While covered attorneys remain subject to the governing authority of the jurisdiction in which they are licensed to practice, they are also subject to these Rules.

(2) When covered USG attorneys are engaged in the conduct of Navy or Marine Corps legal functions, whether serving the Navy or Marine Corps as a client or serving an individual client as authorized by the Navy or Marine Corps, the rules contained in this subpart supersede any conflicting rules applicable in jurisdictions in which the covered attorney may be licensed. However, covered attorneys practicing in State or Federal civilian court proceedings will abide by the rules adopted by that State or Federal civilian court during the proceedings. As for covered non-USG attorneys practicing under the supervision of the JAG, violation of the rules contained in this subpart may result in suspension from practice in DON proceedings.

(3) Covered non-USG attorneys, Reservists, or Retirees (acting in their civilian capacity) who seek to provide legal services in any DON matter under JAG cognizance and supervision, may be precluded from such practice of law if, in the opinion of the JAG (as exercised through this instruction) the attorney's conduct in any venue renders that attorney unable or unqualified to practice in DON programs or proceedings.

§ 776.71 Requirement to remain in good standing with licensing authorities.

(a) *Requirement to remain in good standing with state licensing authority.* (1) Each officer of the Navy appointed as a member of the Judge Advocate General's Corps, each officer of the Marine Corps designated a judge advocate, and each civil service and contracted civilian attorney who practices law under the cognizance and supervision of the JAG shall maintain a status considered ''in good standing'' at all times with the licensing authority admitting the individual to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia.

(2) The JAG, the Director, JA Division, HQMC, or any other supervisory attorney may require any covered USG attorney over whom they exercise authority to establish that the attorney continues to be in good standing with his or her licensing authority. Representatives of the JAG or of the Director, JA Division, HQMC, may also inquire directly of any such covered USG attorney's licensing authority to establish whether he or she continues to be in good standing and has no disciplinary action pending.

(3) Each covered USG attorney shall immediately report to the JAG if any jurisdiction in which the covered USG attorney is or has been a member in good standing commences disciplinary investigation or action against him or her or if the covered USG attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

(4) Each covered non-USG attorney representing an accused in any court-martial or administrative separation proceeding shall be a member in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing

authority to practice law and found by the military judge to be qualified to represent the accused.

(b) *Definition.* (1) The licensing authority granting the certification or privilege to practice law within the jurisdiction generally defines the phrase ''in good standing.'' At a minimum it means that the individual is subject to the jurisdiction's disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law. So long as these conditions are met, a covered USG attorney may be considered ''inactive'' as to the practice of law within a particular jurisdiction and still be considered ''in good standing'' for purposes of this section.

(2) Rule for Courts-Martial 502(d)(3)(A) requires that any civilian defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member ''in good standing,'' see *U.S.* v. *Waggoner*, 22 M.J. 692 (AFCMR 1986), and is then authorized to practice law within that jurisdiction. It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of this Rule may result in professional disciplinary action as provided for in this instruction, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under Secretary of the Navy Instruction 1920.6(series) based on the officer's failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG's cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of this Rule may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) Certification by the United States Court of Appeals for the Armed Forces that a covered attorney is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27 UCMJ certification alone.

§§ 776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG's policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys practicing under JAG cognizance and supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of subpart B of this part or the Code of Judicial Conduct. The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

§ 776.77 Related Investigations and Actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to characterize appropriately the nature of a covered attorney's conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with this part, that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney's commander through the disciplinary process provided under the UCMJ and implementing regulations, or through referral to appropriate civil authority.

(c) Poor performance of duty is properly addressed by the covered USG attorney's reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

(d) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving covered attorneys. When, however, investigations into criminal conduct or poor performance reveal conduct that constitutes a violation of this part, or of the Code of Judicial Conduct in the case of judges, such conduct shall be reported to the Rules Counsel immediately.

(e) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this subpart.

§ 776.78 Informal complaints.

Informal, anonymous, or ''hot line'' type complaints alleging professional misconduct must be referred to appropriate authority (such as the JAG IG or the concerned supervisory attorney) for inquiry. Such complaints are not, by themselves, cognizable under this subpart but may, if reasonably confirmed, be the basis of a formal complaint described in § 776.79.

§ 776.79 The complaint.

(a) The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of subpart B of this part or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) Contain a complete, factual statement of the acts or omissions constituting the substance of the complaint, as well as a description of any attempted resolution with the covered attorney concerned. Supporting statements, if any, should be attached to the complaint.

(b) A complaint may be initiated by any person, including the Administrative Law Division of the Office of JAG (JAG (13)), or the Judge Advocate Research and Civil Law Branch, JA Division, HQMC (JAR).

§ 776.80 Initial screening and Rules Counsel.

(a) Complaints shall be forwarded to JAG(13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC, to JAR.

(b) JAG(13) and JAR shall log all complaints received and will ensure that a copy is provided to the covered attorney who is the subject of the complaint.

(c) The covered attorney concerned may elect to provide an initial statement regarding the complaint for the Rules Counsel's consideration. The covered attorney will promptly inform JAG(13) or JAR if he or she intends to submit any such statement. At this screening stage, forwarding of the complaint to the Rules Counsel will not be unduly delayed to await the covered attorney's submission.

(d) The Rules Counsel shall initially review the complaint, and any statement submitted by the covered attorney complained of, to determine whether it complies with the requirements set forth in § 776.79.

(1) Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG (13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or

(ii) Alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney's last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

§ 776.82 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct or other violations of this part, and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a ''substantial threat of irreparable harm'' include:

(1) When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney's fitness to practice law, and where substantial evidence exists to support the charge;

(2) When engaged in the unauthorized practice of law (e.g., failure to maintain good standing in accordance with § 776.71); or

(3) Where unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, JAG may order the covered attorney to show cause why he or she should not face interim suspension, pending completion of a professional responsibility investigation. The covered attorney shall have 10 calendar days in which to respond.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of

misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice, JAG may direct an interim suspension of the covered attorney's certification under Articles 26(b) or 27(b), UCMJ, or R.C.M. 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under this instruction.

(d) Within 10 days of JAG's decision to impose an interim suspension, the covered attorney may request an opportunity to be heard before an impartial officer designated by JAG. Where so requested, that opportunity will be scheduled within 10 calendar days of the request. The designated officer shall receive any information that the covered attorney chooses to submit on the limited issue of whether to continue the interim suspension. The designated officer shall submit a recommendation to JAG within 5 calendar days of conclusion.

(e) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of JAG's imposition of interim suspension.

(f) Any professional responsibility investigation involving a covered attorney who has been suspended pursuant to this section shall proceed and be concluded without appreciable delay. However, JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension. Where necessary, continuation of the interim suspension shall be reviewed by JAG every 6 months.

§ 776.83 Preliminary inquiry.

(a) The purpose of the preliminary inquiry is to determine whether, in the opinion of the officer appointed to conduct the preliminary inquiry (PIO), the questioned conduct occurred and, if so, whether it constitutes a violation of this part or the Code of Judicial Conduct. The PIO is to recommend appropriate action in cases of substantiated violations.

(b) Upon receipt of the complaint and charges, the PIO shall promptly investigate the charges, generally following the format and procedures set forth in the Manual of the Judge Advocate General for the conduct of command investigations. Reports of relevant investigations by other authorities including, but not limited to, State bar associations may be used. The PIO should also:

(1) Identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable;

(2) Identify, gather, and preserve all other relevant and material evidence; and

(3) Provide the covered attorney concerned an opportunity to review all evidence, affidavits, and statements collected and a reasonable period of time (normally not exceeding 7 days) to submit a written statement or any other written material that the covered attorney wishes considered.

(c) The PIO may appoint and use such assistants as may be necessary to conduct the preliminary inquiry.

(d) The PIO shall personally review the results of the preliminary inquiry to determine whether, by a preponderance of the evidence, a violation of this part or of the Judicial Code has occurred.

(1) If the PIO determines that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the PIO determines by a preponderance of the evidence that a violation did occur, and that corrective action greater than counseling may be warranted, he or she shall then recommend what further action is deemed appropriate.

(e) The PIO shall forward (via the OEGCMJ in appropriate Marine cases) the results of the preliminary inquiry to the Rules Counsel, providing copies to the covered attorney concerned and all parties to whom the charges were previously sent.

(f) The Rules Counsel shall review all preliminary inquiries. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the PIO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that further professional discipline or corrective action may be warranted, the Rules Counsel shall:

(i) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, request, on behalf of JAG, that the subject attorney's OEGCMJ appoint a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation into the matter;

(ii) In all other cases, appoint, on behalf of JAG, a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation; and

(iii) Notify those supervisory attorneys listed in paragraphs (c) and (d) of § 776.81.

§ 776.84 Ethics investigation.

(a) Whenever an ethics investigation is initiated, the covered attorney concerned will be so notified, in writing, by the Rules Counsel.

(b) The covered attorney concerned will be provided written notice of the following rights in connection with the ethics investigation:

(1) To request a hearing before the investigating officer (IO);

(2) To inspect all evidence gathered;

(3) To present written or oral statements or materials for consideration;

(4) To call witnesses at his or her own expense (local military witnesses should be made available at no cost);

(5) To be assisted by counsel (see paragraph (c) of this section);

(6) To challenge the IO for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and

(7) to waive any or all of these rights.

(c) The covered attorney may be represented by counsel at the hearing. Such counsel may be:

(1) A civilian attorney retained at no expense to the Government; or,

(2) In the case of a covered USG attorney, another USG attorney:

(i) Detailed by the cognizant Naval Legal Service Office (NLSO), Law Center, or Legal Service Support Section (LSSS); or

(ii) Requested by the covered attorney concerned, if such counsel is attached to the cognizant NLSO, Law Center, LSSS, or to a Navy or Marine Corps activity located within 100 miles of the hearing site at the time of the scheduled hearing, and if such counsel is reasonably available, as determined by the requested counsel's reporting senior in his or her sole discretion. There is no right to detailed counsel if requested counsel is made available.

(d) If a hearing is requested, the IO will conduct the hearing after reasonable notice to the covered attorney concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Rules of evidence do not apply. The covered attorney concerned or his or her counsel may question witnesses that appear. The proceedings shall be recorded but no transcript of the hearing need be made. Evidence gathered during, or subsequent to, the preliminary inquiry and such additional evidence as may be offered by the covered attorney shall be considered.

(e) The IO may appoint and use such assistants as may be necessary to conduct the ethics investigation.

(f) The IO shall prepare a report which summarizes the evidence, to include information presented at any hearing.

(1) If the IO believes that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the IO believes that a violation did occur, and that corrective action greater than counseling is warranted, he or she shall then recommend what further action is deemed appropriate.

(g) The IO shall forward the ethics investigation, including the IO's recommendations, to the Rules Counsel, as follows:

(1) In cases involving Navy or Marine Corps attorneys serving with NLSC units, via Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving with Marine Corps units, via the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving Navy or Marine Corps attorneys serving in subordinate Navy fleet or staff billets, via the fleet or staff judge advocate attached to the appropriate second-echelon commander;

(4) In cases involving members of the Navy-Marine Corps Trial Judiciary, via the Trial Judiciary Chief Judge;

(5) In cases involving Marine Corps attorneys serving in defense billets, via the Chief Defense Counsel of the Marine Corps;

(6) In cases involving Marine Corps attorneys not serving in defense counsel billets or in Navy units, via the OEGCMJ over the concerned attorney; and

(7) In cases involving covered attorneys certified by the Judge Advocates General/Chief Counsel of the other U.S. Armed Forces, via the appropriate military service attorney discipline section of that U.S. Armed Force.

(h) The Rules Counsel shall review all ethics investigations. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the IO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel believes, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that professional disciplinary action greater than corrective counseling is warranted, the Rules Counsel shall forward the investigation, with recommendations as to appropriate disposition, to JAG.

§ 776.85 Effect of separate proceeding.

(a) For purposes of this section, the term *separate proceeding* includes, but is not limited to, court-martial, non-judicial punishment, administrative board, or similar civilian or military proceeding.

(b) In cases in which a covered attorney is determined, at a separate proceeding determined by the Rules Counsel to afford procedural protection equal to that provided by a preliminary inquiry under this instruction, to have committed misconduct which forms the basis for ethics charges under this instruction, the Rules Counsel may dispense with the preliminary inquiry and proceed directly with an ethics investigation.

(c) In those cases in which a covered attorney is determined to have committed misconduct at a separate proceeding which the Rules Counsel determines has afforded procedural protection equal to that provided by an ethics investigation under this instruction, the previous determination regarding the underlying misconduct is *res judicata* with respect to that issue during an ethics investigation. A subsequent ethics investigation based on such misconduct shall afford the covered attorney a hearing into whether the underlying misconduct constitutes a violation of this part, whether the violation affects his or her fitness to practice law, and what sanctions, if any, are appropriate.

(d) The Rules Counsel may dispense with the preliminary inquiry and ethics investigation, and if warranted, recommend to JAG that the covered attorney concerned be disciplined,

consistent with this subpart, after providing the covered attorney concerned written notice and an opportunity to be heard in writing, in those cases in which a covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by one year or more of imprisonment) in a civilian or military court which, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the DON or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this instruction.

§ 776.86 Action by JAG.

(a) JAG is not bound by the recommendation rendered by the Rules Counsel, IO, PIO, or any other interested party, but will base any action on the record as a whole. Nothing in this instruction limits JAG authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated this part, either in DON or civilian proceedings.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of subpart B of this part or its application to the facts of a particular case.

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, JAG will take such action as JAG considers appropriate in JAG's sole discretion. JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Where determining the allegations to be unfounded, or that no further action is warranted, direct the Rules Counsel to make appropriate file entries and to notify the complainant, covered attorney concerned, and all interested parties of such determination.

(3) Where determining the allegations to be supported by clear and convincing evidence, take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney's authority to provide legal assistance;

(iv) Where finding that the misconduct so adversely affects the covered attorney's continuing ability to practice law in the naval service or that the misconduct so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ (10 U.S.C. 827(b)), or R.C.M. 502(b)(3), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently;

(v) In the case of a judge, where finding that the misconduct so prejudices the reputation of military trial and appellate judges that certification under Article 26(b), UCMJ (10 U.S.C. 826(b)), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently; and

(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously provided copies of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before courts-martial or the U.S. Navy-Marine Corps Court of Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

§ 776.87 Finality.

Any action taken by JAG is final, subject to any remedies afforded by Navy Regulations or any other regulation to the covered attorney concerned.

§ 776.88 Report to licensing authorities.

Upon determination by JAG that a violation of the Rules or the Code of Judicial Conduct has occurred, JAG may cause the Rules Counsel to report that fact to the Federal, state, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. The JAG's decision in no way diminishes a covered attorney's responsibility to report adverse professional disciplinary action as required by the attorney's Federal, state, and local bar or other licensing authority.

Subpart D—[Reserved]

Dated: July 1, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–17137 Filed 7–9–99; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 125–1b; FRL–6375–5]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a June 1, 1999, request from Ohio for a State Implementation Plan (SIP) revision of the Dayton/Springfield, Ohio ozone maintenance plan. The maintenance plan revision reestimates the point source growth estimates and allocates 5.5 tons per day of VOC emissions to establish a new transportation conformity mobile source emissions budget for the year 2005. We are approving the allocation of the 5.5 tons per day volatile organic compounds (VOCs) growth estimate to the area's 2005 mobile source emissions budgets for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. We are also correcting a typographical error in the original maintenance plan approval for the point and area source VOC numbers for 2005. In the Final Rules section of this **Federal Register**, USEPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we

receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If USEPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this document.

DATES: We must receive comments by August 11, 1999.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized as follows:

What action Is USEPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What Action Is USEPA Taking Today?

In this action, we are proposing to approve a revision to the ozone maintenance plan for Dayton/Springfield, Ohio. The revision will change the mobile source emission budget that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth. We are also correcting a typographical error in the original maintenance plan approval. The original **Federal Register** approval on May 5, 1995, (60 FR 22289) contained a typographical error in Table 1 showing the VOC emissions from the source categories in the Dayton/Springfield area. The 2005 VOC emissions for point and area sources are incorrect in Table 1. The correct number for point source emissions in 2005 should be 98.0 and the correct number for area sources in 2005 should be 63.8 tons of VOC. These corrected numbers match the original submittal from the Ohio Environmental Protection Agency (OEPA) and are documented in the docket materials. This correction does not change the substance of the maintenance plan approval.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 29, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–17492 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN–217–1–9920b; FRL–6373–8]

Implementation Plan and Redesignation Request for the Williamson County, Tennessee Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to simultaneously approve the lead state implementation plan (SIP) and redesignation request for the Williamson County, Tennessee lead nonattainment area. Both plans, dated May 12, 1999, were submitted by the State of Tennessee for the purpose of demonstrating that the Williamson County area has attained the lead National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the EPA is approving the Tennessee's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 11, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, Atlanta, Tennessee 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 17, 1999.

Winston A. Smith,

Acting Regional Administrator, Region 4.

[FR Doc. 99–17339 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on the Proposed Rule To List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are

reopening the comment period on the proposed rule to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We invite all interested parties to submit comments on this proposal.

DATES: We will accept comments until September 10, 1999. We will consider any comments received by the closing date in the final decision on this proposal.

ADDRESSES: You may submit written comments and materials concerning the proposal to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon is a small freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures of this fish have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment.

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. Sheldon Morgan, Chairman, Alabama-Tombigbee Rivers Coalition, requested a public hearing within the allotted time period. On May 25, 1999, we published a notice in the **Federal Register** announcing a public hearing and extending the comment period until July 5, 1999 (64 FR 28142). We held a public hearing on June 24, 1999, at the Montgomery Civic Center in Montgomery, Alabama.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In making a final decision, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

The previous comment period on this proposal closed on July 5, 1999. To allow all interested parties the maximum time to submit their comments for the record, we are reopening the comment period until September 10, 1999.

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 6, 1999.

H. Dale Hall,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 99–17557 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 64, No. 132

Monday, July 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a survey of cattle, hog, chicken, and turkey slaughter and processing plants. The survey would contain questions on the costs of implementing and maintaining a Hazard Analysis Critical Control Point (HACCP) system and the usage of pathogen-reducing technologies and methods. These data will be used to examine the costs of HACCP regulation, to link the use of pathogen-reducing technologies and methods to plant pathogen data provided by the Food Safety Inspection Service (FSIS), to assess the extent of the adoption of pathogen-reducing technologies and methods, to develop indexes of pathogen-reducing technologies and methods that could be used to learn how technology and methods adoption progresses over time and how changes in technology levels affects plant-level pathogens, and to examine characteristics of plants that adopt particular classes of pathogen-reducing technologies and methods.

DATES: Comments on this notice must be received by September 10, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Michael Ollinger, Economist, Diet, Safety, Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room N–3064, Washington, DC 20036–5831, 202–694–5454.

SUPPLEMENTARY INFORMATION:

Title: Pathogen Reduction and Innovation Under HACCP Regulation in Cattle, Hog, Chicken, and Turkey Slaughter and Processing Plants.

Type of Request: Approval to collect data on the cost to industry of HACCP regulation and the use of pathogen-reducing technologies and methods.

Abstract: ERS is responsible for economic research on the economics of pathogen control regulation and HACCP regulation in the meat and poultry industries. Recent estimates suggest that microbial pathogens cause 6.5–33 million cases of human illness and up to 9,000 deaths each year. These findings have made food safety a major White House policy priority and have led FSIS to implement HACCP regulation. FSIS estimates that this regulation will reduce foodborne illness by 90% and cost industry $1 billion over 20 years. However, some economists, policy-makers, and firms assert that producer costs will be much higher and disproportionately affect small firms. Moreover, they argue that the lost revenues and profits due to product recalls, reputation losses, and reduced product shelf-life give industry strong incentives to reduce pathogens and that industry's approach to pathogen-reduction is less costly than government regulation.

Answers to questions of regulatory costs and incentives to use pathogen-reducing technologies and methods requires data. However, these data do not exist and there is no plan to obtain them. The objective of this proposal is to generate survey data that will illustrate both the costs of HACCP regulation and industry usage of pathogen-reducing technologies and methods. The data and subsequent analyses will be useful for policy-makers in making regulatory decisions and provide general information to the public about industry efforts to reduce pathogens.

The data would be used by economists to assess the costs of HACCP regulation, to link the use of pathogen-reducing technologies and methods to plant pathogen data provided by the Food Safety Inspection Service (FSIS), to assess the extent of the adoption of pathogen-reducing technologies and methods, to develop indexes of pathogen-reducing technologies and methods that could be used to learn how technology and methods adoption progresses over time and how changes in technology levels affects plant-level pathogens, and to examine characteristics of plants that adopt particular classes of pathogen-reducing technologies and methods.

Estimates of Burden: Public reporting burden for this data collection is estimated to average 30 minutes.

Respondents: Federally registered cattle, hog, chicken, and turkey slaughter and processing manufacturing plants.

Estimated Number of Respondents: 2,000.

Estimated Total Burden on Respondents: 1,000 hours.

Copies of Information: Copies of the information to be collected can be obtained from Michael Ollinger, Economist, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N–3064, Washington, DC 20036–5831, (202) 694–5454.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Michael Ollinger, Economist, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW, Room N–3064, Washington, DC 20036–5831, (202) 694–5454. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 14, 1999.

Betsy Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 99–17532 Filed 7–9–99; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: International Trade Administration.

Title: Participation Agreement and Trade Mission Application.

Agency Form Number: ITA–4008P–1.

OMB Number: 0625–0147.

Type of Request: Revision-Emergency Submission.

Burden: 2,688 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes—65 minutes.

Needs and Uses: The Participation Agreement and Trade Mission Application forms are the vehicles by which individual firms agree to participate in the Department of Commerce's (DOC) trade promotion program, identify the products or services they intend to sell or promote, and record their required participation fees. DOC is revising the current Form ITA–4008P–1, ''Trade Mission Application,'' to clarify and refine the information sought, which relates to industry sector and principal line of business, size of company, content of products, and export experience. Two questions are being added to assist in verifying the legitimacy of a company and performing background security checks on applicants seeking to participate in trade missions led by the Secretary of Commerce.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 6, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–17570 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Applicant Background Questionnaire.

Form Number(s): BC–1431.

Agency Approval Number: 0607–0494.

Type of Request: Revision of a currently approved collection.

Burden: 133,333 hours.

Number of Respondents: 3,200,000.

Avg Hours Per Response: 2.5 minutes.

Needs and Uses: The Applicant Background Questionnaire is completed on a voluntary basis by applicants for temporary (Schedule A) positions with the Census Bureau at the time of application and testing. Temporary positions normally last 8–12 weeks, and applicants must meet the minimum qualifications of a written test. The BC–1431 is used to collect minority and handicapped information in order for the Census Bureau to evaluate its Schedule A recruitment program and to strengthen affirmative action recruitment. This information is useful in determining whether we have a representative sample of the community from which we are hiring and allows us to adjust recruiting efforts quickly and to employ local applicants for indigenous hiring. Background information provided by applicants will not be used in applicant screening or selection and will not be available to the selecting official. An applicant's decision to complete or not complete this form will not affect his or her opportunity to be selected for a position with the Census Bureau.

The expected number of applicants for temporary Census Bureau jobs is increasing significantly because of our efforts to hire over 800,000 enumerators for Census 2000. In this request, we seek an addition to annual reporting burden to cover this increase.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Pub. L. 92–261; Equal Employment Opportunity Act of 1972, Section 717.— Pub. L. 94–311; Joint Resolution relating to the publication of economic and social statistics for Americans of Spanish origin or descent.—43 FR 38297, Section 4; Information on Impact.—'' 5 U.S.C. 7201; Anti-discrimination Policy; Minority Recruitment Program.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–17571 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Notice of Meeting With Interested Public on the Sale of Medicines, Medical Products, Food and Agricultural Items to Cuba

The Bureau of Export Administration (BXA) will hold a meeting on July 15, 1999 for those companies and organizations that have an interest in exporting medicines and medical products, food and agricultural items for sale to Cuba. U.S. Government officials will provide information at this meeting on how to apply for export of such items to Cuba.

The meeting will be held July 15, 1999 at 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 6800, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC.

If you plan to attend, please fax your name and company or organizational affiliation to (202) 482–6088 or (202)

482–4094, Attn: July 15 Cuba Briefing. For further information, please contact John Bolsteins at BXA on (202) 482–3283 or (202) 482–4252.

Background

In March of 1998 and January of 1999, the President announced certain new initiatives intended to aid the Cuban people in their transition to democracy and a market economy.

Under the first initiative, the Department of Commerce and other agencies streamlined the review of license applications for the sale to Cuba of medicines, medical supplies and equipment. Prior to 1998, very few applications to export medicines and medical supplies and equipment for sale to Cuba were submitted to the Commerce Department. Now, since the March 1998 announcement, the volume of applications and licensed medical exports to Cuba has increased notably. These medical exports are monitored to ensure that they are for the use by the Cuban people.

Under the second initiative, the Department of Commerce revised its Cuba regulations to provide for case-by-case review of applications to sell food and certain agricultural items to independent entities and non-governmental organizations in Cuba. This program is intended to aid the small but vital private sector in Cuba. In a corresponding action, the Treasury Department revised its Cuba regulations to provide for specific licensing of travel to Cuba to explore sales opportunities in these commodity areas.

Dated: July 7, 1999.

James Lewis,

Director, Office of Strategic Trade.

[FR Doc. 99–17741 Filed 7–8–99; 11:52 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 27 & 28, 1999, 9 a.m., in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

July 27

Closed Session

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

July 28

Public Session 9 a.m.–12 p.m.

2. Election of officers.
3. Comments or presentations by the public.
4. Consultation on renewal of Committee charter.
5. Update on proposed Export Administration Act bill.
6. Discussion paper, Alternatives to High-Performance Computing.
7. Work Plan for Fiscal Year 2000.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. and Pennsylvania Ave, NW, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: July 6, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–17506 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–99]

Foreign-Trade Zone 59—Lincoln, NE; Application for Expansion of Manufacturing Authority—Subzone 59A, Kawasaki Motors Manufacturing Corp., U.S.A., Plant, Lincoln, NE (Motorcycles, Personal Watercraft, All-Terrain Vehicles, Utility Work Trucks, Industrial Robots)

A application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign Trade Zone, Inc., grantee of 59, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures and requesting authority to expand the boundary of FTZ Subzone 59A at the Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), plant in Lincoln, Nebraska. It was formally filed on June 25, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12–28–94) and currently consists of a single, 305-acre site with a total of 1.13 million square feet of manufacturing and warehouse space. The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6–9–95) .

The applicant is now requesting authority to expand the subzone boundary to include an adjacent 27-acre parcel and to expand the scope of FTZ manufacturing authority to include increased capacity for the production of motorcycles, personal watercraft , all-terrain vehicles, utility work trucks, and industrial robots. Under the current expansion plan, the KMM plant's

capacity will be approximately doubled (to 225,000 units per year) with the addition of 1.07 million square feet of production area. The activity will involve fabrication, welding, molding, and assembly using domestic and foreign-origin components. The application indicates that the expanded operations will reduce the current level of foreign-sourced components used in the manufacturing process. Foreign-sourced components and materials (about 40 percent of the finished vehicles' material value) include: plastic parts, rubber belts, fasteners, air and liquid pumps/compressors, data processing equipment (numerical controllers) and parts, optical readers, valves and switches, electric motors and transformers, parts of industrial robots, transmissions/gear boxes, clutches, diodes, transistors, semiconductors, liquid crystal devices, measuring instruments, spark-ignition/diesel engines, transmissions, calipers/brake parts, wheels, tires, parts of rubber, articles of agglomerated cork, paperboard/cardboard boxes, glazers putty, caulking, glue/adhesive, plastic tubes/pipes/fittings, reflective sheet, polyurethane and PVC sheet/film/laminates, plastic knobs/handles/gaskets/washers/seals/fasteners, V-belts, decals, printed materials, cargo nets, non-electrical graphite/carbon items, safety glass, mirrors, profiles/tubes/sections/couplings/wire of alloy, cast or stainless steel, chain, fasteners, steel/copper springs, brake cables, aluminum tubes/pipes/fittings/fasteners, articles of lead, base metal articles, heat exchangers, filters, bearings and related assemblies, gears, transmission shafts, torque converters, pulleys, ball/roller screws, sprockets, flywheels, propellers, electric motors, commutators, capacitors, fuses, switches, resistors, stators, rotors, inductors, transformers, electromagnetic couplings, batteries, ignition components, starters, alternators, voltage regulators, lighting equipment, horns, audio components, radios, cassette players, navigational equipment, alarm systems, electronic components, fiber optic and coaxial cables, wire, parts of motor vehicles (Heading 8708), hulls, flat panel displays, measuring and process control instruments, thermostats, gauges, and clocks (duty rate range: free – 15%, 16¢+2.5%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production (15% of shipments). On its domestic sales, the company can choose the duty rate that applies to the finished motorcycles, personal watercraft, all-terrain vehicles, utility work trucks, and industrial robots (free – 2.8%) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 27, 1999).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 28, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17639 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–99]

Foreign-Trade Zones 19—Omaha, NE; Application for Foreign-Trade Subzone Status, Zeneca Inc. (Agricutural Chemical Products) Omaha, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dock Board of the City of Omaha, grantee of FTZ 19, requesting special-purpose subzone status for the manufacturing facilities (agricultural chemical products) of Zeneca Inc. (Zeneca), located in Omaha, Nebraska. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 25, 1999.

The Zeneca facility (42 acres, 252,000 sq. ft. + 223,000 proposed) is located at 4111 Gibson road in Omaha, Nebraska. The facilities (63 full-time and 30 seasonal employees) produce agricultural chemical products, which Zeneca intends to formulate, test, package, and warehouse under FTZ procedures. The principal product to be formulated initially under subzone procedures is the herbicide which is marketed under the trade name Achieve®. Other products sourced from this site are the Force® 3G insecticide, the Ordram® 15GM, FulTime®, Surpass EC®, Eradicane®, Eptam®, and Ro-Neet® herbicides, the Turbocharge® crop adjuvant, and the Bonzi® plant growth regulator. Zeneca indicates that other products may be sourced from this facility in the future, and that initial U.S. value added will be 15 percent of finished products' value.

Zeneca has indicated that the following inputs will be the principal products to be imported initially under FTZ procedures: tralkoxydim; azoxystrobin; n-phosphonomethylglycyne trimethyl sulfonium salt; brodifcaoum; paclobutrazol; daconil; bromoxynil; cyhalothrin CS; and pirimiphosmethyl. Current duty rates for these inputs range from 3.7 to 10.7 percent.

Zone procedures would exempt Zeneca from Customs duty payments on foreign components used in export production. On its domestic sales, Zeneca would be able to choose the lower duty rate that applies to the finished products (6.5 percent) for the foreign inputs noted above. Zeneca would be able to avoid duty on foreign inputs which become scrap/waste, estimated at 0.5 percent of imported inputs. The application indicates that FTZ procedures would also allow Zeneca to eliminate its current use of a foreign ''toll'' manufacturer to process the Achieve® herbicide, thus realizing savings through the internalization of this function. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 11135 ''O'' Street, Omaha, Nebraska 68137

Dated: June 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17640 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–99]

Foreign-Trade Zone 38—Charleston, SC; Application for Foreign-Trade Subzone Status, Fuji Photo Film, Inc. (Imaging and Information Products) Greenwood, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the manufacturing and distribution facilities (imaging and information products) of Fuji Photo Film, Inc. (Fuji), located in Greenwood, South Carolina. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 28, 1999.

Fuji's Greenwood, South Carolina complex (488 acres, 2.0 million sq. ft.) is comprised of seven facilities: *Facility 1* (350,000 sq. ft.)—Distribution Center, located at 921 Highway 246 South; *Facility 2 (*120,000 sq. ft.)—Graphic Arts Film Finishing Facility, located at 201 Pucketts Ferry Road; *Facility 3* (210,000 sq. ft.)—Pre-sensitized Offset Printing Plate Manufacturing Facility, located at 211 Pucketts Ferry Road; *Facility 4* (300,000 sq. ft.)—Videotape and Computer Back-up Tape Manufacturing Facility, located at 311 Pucketts Ferry Road; *Facility 5* (200,000 sq. ft.)—One-time-use Camera Manufacturing Facility, located at 401 Pucketts Ferry Road; *Facility 6* (500,000 sq. ft.)—Color Photographic Paper and Color Negative Film Manufacturing Facility, located at 401 Pucketts Ferry Road; and *Facility 7* (250,000 sq. ft.)—35mm Film Finishing Factory, located at 123 Spray Shed Road.

The facilities (1,250 employees) are used for the manufacture and distribution of imaging and information products (graphic arts film; pre-sensitized offset printing plates; blank videotapes and computer back-up tape; one-time-use cameras; and color negative photographic paper and film). Some of the components used in the manufacturing process are purchased from abroad (ranging from 8 to 75 percent of finished product value, depending on the product), with average U.S. value added for the Greenwood facilities estimated at 60 to 70 percent of the finished products' value. The foreign components which Fuji proposes to import under subzone procedures include chemicals (e.g., titanium oxide; methanol; alkylphenonl; glycol ether; di-n-butyl phthalate; tricarboxylated benzene; hydroxyalkyl benzoate; phenylphosphonic acid; axon dye; basic blue dye; oil/water emulsion) and other components (e.g., bulk photographic film; packaging materials; one-time-use camera components) used in the production of Fuji's imaging and information products (current duty rates on these items range from duty-free to 13.2 percent).

Zone procedures would exempt Fuji from Customs duty payments on foreign components used in export production. On its domestic sales, Fuji would be able to choose the lower duty rate that applies to the finished products (duty-free to 6.5 percent) for the foreign inputs noted above. Fuji would be able to avoid duty on foreign inputs which become scrap/waste (savings on scrap/waste are estimated to comprise less than 15 percent of overall anticipated subzone savings). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, Park Central Office Park, Building 1, Suite 109, 555 N. Pleasantburg Drive, Greenville, SC 29607

Dated: June 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–17641 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of barium chloride from the People's Republic of China.

SUMMARY: On November 30, 1998, the Department of Commerce (''the Department'') published a notice of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China (PRC) covering the period October 1, 1997 through September 30, 1998.

For all companies named in this review, we are basing our preliminary results on ''facts available'' (FA). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on entries during the period.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Nova J. Daly or Thomas Futtner, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0989, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April 1998).

Period of Review

The period of review (POR) is October 1, 1997 through September 30, 1998.

Scope of the Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas BaCl2 or BaCl2–2H2O, currently classifiable under item number 2827.38.00 of the Harmonized Tariff Schedule (HTS). Although the HTS item numbers are provided for convenience and for Customs purposes, the written description remains dispositive.

Background

On October 17, 1984, the Department of Commerce (the Department) published in the **Federal Register** (49 FR 40635) the antidumping duty order on barium chloride from the PRC. On October 9, 1998, the Department published in the **Federal Register** (63 FR 54440) a notice of opportunity to request an administrative review of the antidumping duty order. In response to our notice of opportunity to request administrative review for this POR, the petitioner, Chemical Products Corporation (''CPC''), requested, by letter dated October 22, 1998, that the Department conduct an administrative review of the following Chinese manufacturers/exporters of the subject merchandise: Hebei Xinji Chemical Plant (Hebei); Hengnan Chemical Factory (Hengnan); Kunghan Chemical Factory (Kunghan); Linshu Chemical Factory (Linshu); Qingdao Red Star Chemical Group Co. (Red Star); Sichuan Emeishan Salt Chemical Industry Group Company, Ltd. (Sichuan); Sinochem (U.S.A.)(Sinochem); Tangshan Chemical Factory (Tangshan); Tianjin Chemical Industry Corporation (Tianjin); Tianjin Bohai Chemical United Import/Export Company (Tianjin Bohai); and Zhangjiaba Salt Chemical Plant (Zhangjiaba). (*See* Letter from CPC to the Department, October 22, 1998). One of these companies, Sinochem, was previously determined by the Department to be entitled to a separate rate.

On November 30, 1998, the Department published a notice of initiation of an administrative review on the producers/exporters named by the petitioner in its review request (63 FR 65748).

The Department sent questionnaires to all of the companies for which we had addresses on January 28, 1999. Also on January 28, 1999, we sent a letter to Mr. Zhang Yuqing of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), enclosing copies of the questionnaire.

Separate Rates

Although Sinochem had been granted separate rate status in a prior administrative review, in this review, like the other named companies, Sinochem failed to respond or show that it remained entitled to a separate rate. Consequently, we have considered Sinochem to be part of the PRC-wide entity for purposes of this administrative review. In addition, the other companies named in the request for review also did not request a separate rate. Exporters which have not established they are entitled to a separate rate are presumed to be under common government control and, therefore, should receive a single PRC-wide rate. Because none of the companies for which an administrative review has been requested for this POR has demonstrated that it is entitled to a separate rate, all are deemed to be included in the PRC-wide entity, and will receive a common margin in this review.

Facts Available

Section 776(a)(1) of the Act mandates that the Department use FA if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use FA where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In this case, none of the named respondents responded to the Department's questionnaire. Where the Department must base the entire dumping margin for a respondent in an administrative review on FA because that respondent failed to cooperate by not acting to the best of its ability, section 776(b)(2) authorizes the Department to use an inference adverse to the interests of that respondent in choosing FA. Section 776(b)(2) also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record.

In this administrative review, none of the companies responded to our questionnaire. Therefore, we lack information with which to calculate a margin and, consequently, have determined we must base the margin for the PRC-wide entity on FA.

As noted above, none of the companies named in the notice of initiation in this review responded. Therefore, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Consequently, we have preliminarily decided to use adverse FA with respect to the PRC-wide entity in accordance with section 776(b) of the Act.

For the preliminary results of this review, we determine that it is appropriate to use, as adverse FA for the PRC-wide rate, the highest rate from this or previous segments of the proceeding. In this case, we have used Sinochem's rate of 60.84 percent from *Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 29467 (July 2, 1992) (1990–91 Final Results).

Information from prior segments of a proceeding constitutes secondary information. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. 103–316, Vol. 1 (1994)(SAA), provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is an administrative determination. Thus, in an administrative review, if the Department chooses as adverse FA a calculated

dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567, 49568 (September 26, 1995) (the Department disregarded the highest margin as best information available because that margin was based on an extraordinarily high business expense resulting from uncharacteristic investment activities, which resulted in the high margin).

In the absence of information on the administrative record that application of this 60.84 percent rate would be inappropriate, that the margin is not relevant, or that leads us to re-examine this rate as adverse FA in the instant review, we find the margin reliable and relevant. Therefore, we have satisfied the corroboration requirements under section 776(c) of the Act and have applied, as FA, the 60.84 percent margin from the *1990–91 Final Results.*

Accordingly, we are applying a single dumping rate—the highest rate established in any segment of this proceeding—to all exporters in the PRC. The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide rate	60.84

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. *See* section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 44 days after the publication date of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. *See* sections 351.309 and 351.310 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of these preliminary results.

Duty Assessment Rates

Upon completion of the final results in this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We intend to issue assessment instructions to Customs based on the dumping rate stated above. The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), section 777(i) of the Act (19 U.S.C. section 1677f(i)), and 19 CFR 351.221.

Dated: July 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17645 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Furfuryl Alcohol From the Republic of South Africa; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation of antidumping duty order.

SUMMARY: On March 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa and intent to revoke in part. This review covers one manufacturer/exporter and the period June 1, 1997–May 31, 1998. We have analyzed comments submitted regarding the preliminary results.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–0650 or 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On March 8, 1999, we published the preliminary results of this review and intent to revoke in part. *See Furfuryl Alcohol from the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part,* 64 FR 10983. We gave interested parties an opportunity to comment on our preliminary results. On April 7, 1999, respondent Illovo Sugar Limited

(ISL) and its related U.S. selling agent, Harborchem, filed a case brief and requested a hearing. We received no comments from any other party. On April 21, 1999, representatives for ISL met with Department officials in lieu of a hearing to discuss the preliminary results. *See* Memorandum from Case Analyst to the File, April 22, 1999.

Scope of Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Revocation of the Order

In the preliminary results, we indicated our intent to revoke the antidumping duty order in part, with respect to merchandise produced and exported by ISL, noting that record evidence indicated that a South African company unrelated to ISL has exported the subject merchandise to the United States under the order. On April 7, 1999, ISL filed a case brief in which the company argued that the Department should revoke the order in full because there has been no dumping of furfuryl alcohol by any South African producer or exporter for three consecutive reviews, and because the petitioner no longer has an interest in the order.

Based on a review of the relevant record evidence, including the facts pertaining to the shipments exported by the unrelated exporter, we have determined to revoke the order in full for the following reasons: (1) ISL has sold the subject merchandise at not less than normal value (NV) for three consecutive review periods, including this review; (2) there is no evidence to indicate that ISL or other persons are likely to sell the subject merchandise at less than NV in the future; and (3) the exports in question, which occurred over two years ago, represent isolated shipments of insignificant quantities of subject merchandise. We also note that there were no comments filed by any other party on this issue, with respect to either our preliminary results or ISL's case brief.[1] Accordingly, we determine that a full revocation of the order is warranted under 19 CFR 351.222(b)(1) and section 751(d)(1) of the Act.

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1997–May 31, 1998:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

We determine that ISL has met the requirements for revocation set forth in section 351.222(b) of our regulations.

This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1998. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made after May 31, 1998.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17647 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] Although aware of our preliminary decision to revoke in part and of the possibility of a revocation of the order in full, the petitioner did not participate in this review. *See* Memorandum to the File from Richard Moreland dated May 21, 1999.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review, and Partial Recission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, and partial recission of review.

SUMMARY: In response to a request from one respondent and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998.

We preliminarily determine that there is a dumping margin for SKC Limited (SKC) during the period June 1, 1997 through May 31, 1998. We therefore preliminarily are denying SKC's request for revocation.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV). STC Corporation (STC) made no sales or shipments during the POR. Accordingly, we are rescinding the review with respect to STC.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III , Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/0649.

Applicable statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are

references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). On June 25, 1998, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Hoescht Celanese Corporation, requested reviews of SKC and STC. On June 30, 1998, SKC requested an administrative review of its sales and revocation of the order for SKC only. We published a notice of initiation of the review on July 28, 1998 (63 FR 40258).

In response to our request for information, STC reported that it had no sales or shipments during the period of review (POR). On March 24, 1998, the Department sent a no-shipment inquiry regarding STC to the U.S. Customs Service. Customs did not report any shipments by STC during the POR. Therefore, consistent with 19 CFR 351.213(d), we are rescinding the review with respect to STC.

On December 7, 1998, the Department published a notice extending the time limits for publication of its preliminary results by 120 days (63 FR 67456).

Verification

As provided for in section 782(i)(2) of the Act, we verified the information submitted by SKC. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports placed in the case file.

Intent Not To Revoke

In its submission of June 30, 1998, SKC requested, pursuant to 19 CFR 351.222(b)(2), revocation of the order with respect to its sales of PET film from Korea. SKC certified that: (1) It sold the subject merchandise at not less than NV for a period of at least three consecutive years, (2) that in the future it will not sell the subject merchandise at less than NV, and (3) that it agreed to its immediate reinstatement in the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

In this case SKC does not meet the first criterion required for revocation. In this segment of the proceeding the Department preliminarily has found that SKC sold subject merchandise at less than NV. Since SKC has not met the first criterion for revocation, i.e., zero or de minimis margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have preliminarily determined not to revoke the order on PET film from Korea with respect to SKC.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Currency Conversion

Consistent with the position taken in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Final Determination of Sales at Less Than Fair Value (June 8, 1998, (64 FR 30664, 30670)), the Department determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, for the final results the Department will use daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1999 and February 28, 1999.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated SKC's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers after importation.

EP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made an addition to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

Based upon our findings at verification, we revised SKC's reported amounts for brokerage, interest revenue,

Korean inland freight, and further processing costs. (See *Sales Verification of SKC Co., Inc; PET Film from South Korea,* July 6, 1999.)

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. SKC's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade.

Based on the fact that the Department had disregarded SKC's sales of the foreign like product in the June 1996–May 1997 administrative review because they failed the cost test, the Department had reasonable grounds to believe or suspect that SKC made sales below COP during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the Act. (The June 1996–May 1997 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. *See e.g.,* Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 37334, 37335 (July 10, 1998).

Based upon our findings at verification, we revised SKC's reported amounts for G&A and financing expenses. (See *Cost Verification of SKC Co., Inc; PET Film from South Korea,* July 6, 1999.)

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) In substantial quantities within the POR (*i.e.,* within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.,* the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G& A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S.credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See e.g.,* Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked SKC to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. For both channels SKC performs similar selling functions such as market research and after-sales warranty services. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, and in this case, we have determined that the selling functions are similar, we determined

that there exists one LOT for SKC's home market sales.

For the U.S. market SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (i.e., visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. We found that SKC provided a greater degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, SKC sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Therefore, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there are no other respondent's or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

We preliminarily determine that a margin of 1.21 percent exists for SKC for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with this preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–17642 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of pressure sensitive plastic tape from Italy.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy in response to a request from

a manufacturer of the subject merchandise, Autoadesivi Magri s.r.l. The period of review (POR) is October 1, 1997 through September 30, 1998. This review covers products manufactured and exported by Autoadesivi Magri s.r.l. We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Nova J. Daly or Thomas Futtner, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring 1⅜ inches in width and not exceeding 4 millimeters (mils) in thickness. During the POR, the above described PSPT was classified under Harmonized Tariff Schedule (HTS) subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs Service (Customs) purposes. The written description remains dispositive as to the scope of the product coverage.

Background

On October 21, 1977, the Department of Commerce (the Department) published in the **Federal Register** (42 FR 56110) the antidumping duty finding on PSPT from Italy. On October 9, 1998, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping finding for the period, October 1, 1997 through September 30, 1998 (63 FR 54440). On October 28, 1998, in accordance with 19 CFR 351.213(b), Autoadesivi Magri s.r.l. (Magri), a manufacturer of the subject merchandise, requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We did not receive a request to conduct an administrative review from any other party. On November 30, 1998, the Department published a ''Notice of Initiation of Administrative Review'' (63 FR 65748) covering the POR for the above manufacturer.

On November 10, 1998, we issued an antidumping questionnaire to Magri, setting an original deadline of January 11, 1999, for its response. On November 30, 1998, Magri requested an extension of the deadline for submitting its response to January 25, 1999. We granted this request for an extension on December 11, 1998, and specified that if Magri had any questions, it should contact the Department. We did not receive a response to the Department's questionnaire from Magri. In a February 17, 1999 letter to Magri we again afforded it the opportunity to respond to the Department's questionnaire. In the letter, we stated that if Magri had so far not responded because it had no shipments of subject merchandise during the POR, it could so respond by March 15, 1999. We also specified that, otherwise, the Department would take Magri's non-response to mean that it had decided not to cooperate with the review. We clearly stated that, as a consequence, we would apply facts available (FA), as stated in our November 10, 1998, questionnaire.

Because we did not receive a questionnaire response or any other correspondence from Magri, we have determined that we must resort to FA for Magri pursuant to section 776(a) of the Act (*see* ''Use of Facts Otherwise Available'' section, below).

Use of Facts Otherwise Available

Magri did not respond to our original questionnaire or to a follow-up letter that was issued to it. (*See* ''Background'' section of this notice). Section 776(a)(2) of the Act provides that, if an interested party: (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and 782(e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because Magri did not respond to the questionnaire or the follow-up letter, we preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of FA is appropriate for Magri. In addition, there is no information on the record within the meaning of section 782(e) of the Act with regard to sales by Magri and, therefore, no information to consider as an alternative to FA in determining the margin for this company.

Because Magri completely failed to respond, despite the Department's best efforts to accommodate the company, we must conclude that Magri failed to cooperate to the best of its ability to comply with the Department's request for information.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. The section provides that an adverse inference may include reliance on information derived from: (1) The petition, (2) the final determination in the investigation segment of the proceeding, (3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or (4) any other information placed on the record. In addition, the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. 103–316, Vol. 1 (1994), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. In employing adverse inferences, the SAA instructs the Department to consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*; *see also Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69472, 69477 (November 10, 1997).

Because Magri did not cooperate by complying with our request for information, and in order to ensure that it does not benefit from its lack of

cooperation, we are employing an adverse inference in selecting from among the facts otherwise available. The Department's practice when selecting an adverse FA rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse so ''as to effectuate the purpose of the FA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce Magri's future cooperation, we have assigned the company as adverse FA the highest rate from any prior segment of the proceeding, 12.66 percent. This rate was calculated in *Pressure Sensitive Plastic Tape From Italy; Final Results of Administrative Duty Review of Antidumping Finding,* 48 FR 35686 (August 5, 1983) (*Final Results 1977–80*), covering the period February 18, 1977 through September 30, 1980.

Information from prior segments of the proceeding, such as involved here, constitutes ''secondary information'' under section 776(c) of the Act. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse FA, the Department stated in *TRBs* that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin.'' *Id.*

As stated above, the highest rate determined in any prior segment of the proceeding is 12.66 percent, a calculated rate from *Final Results 1977–80.*

In the absence of information on the administrative record that application of the 12.66 percent rate to Magri would be inappropriate as an adverse FA rate in the instant review, we have applied, as FA, the 12.66 percent margin from a prior administrative review of this finding, and have satisfied the corroboration requirements under section 776(c) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the POR:

Manufacturer/exporter	Weighted-average margin percentage
Autoadesivi Magri s.r.l.	12.66

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSPT from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value (LTFV) investigation or in a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous reviews or in the original LTFV investigation, the cash deposit rate will be 12.66 percent, the ''new shipper'' rate established in the final results of the first antidumping finding administrative review conducted by the Department (*see Final Results 1977–80,* 48 FR at 35688).[1] These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to

[1] This rate will constitute the ''all others'' rate the for this review. In proceedings governed by antidumping findings, unless we are able to ascertain the ''all others'' rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews, (*see, e.g., Final Results of Antidumping Duty Administrative Review of Certain Internal-Combustion Industrial Forklift Trucks From Japan,* 59 FR 1374, 1384, (January 10,1994)).

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17644 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the countervailing duty order on certain carbon steel products from Sweden. The period covered by this administrative review is January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Gayle Longest, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1985, the Department published in the **Federal Register** (50 FR 48517) the countervailing duty order on certain carbon steel products from Sweden. On October 9, 1998, the Department published a notice of ''Opportunity to Request Administrative Review'' (63 FR 54440) of this countervailing duty order. We received timely requests for review, and we initiated a review covering the period January 1, 1997 through December 31, 1997, on November 30, 1998 (63 FR 65749).

In accordance with 19 CFR 351.213(b) this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producer/exporter of the subject merchandise for which the review was requested is: SSAB Svenskt Stal AB (SSAB). This review covers seven programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of certain carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped: whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000. The written description remains dispositive.

Subsidies Valuation Information

Privatization and Sale of Assets to Other Companies

SSAB is the only Swedish company that produces and exports the subject merchandise. SSAB has sold several productive units and the company was partially privatized in 1987 and in 1989. In 1994, SSAB was completely privatized.

In *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden*, 58 FR 37385 (July 9, 1993) (*1993 Certain Steel Products*), the Department found that SSAB had received countervailable subsidies prior to the sale of the productive units and the two partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (*see General Issues Appendix*, (GIA) 58 FR 37217, 37262 (July 9, 1993)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate a rate for the subsidies that were allocated to the spin-off, *i.e.*, a productive unit that was sold, we first determined the amount of the subsidies attributable to each productive unit by dividing the asset value of that productive unit by the total asset value of SSAB in the year of the spin-off. We then applied this ratio to the net present value (NPV), in the year of the spin-off, of the future benefit streams from all of SSAB's prior subsidies allocable to the POR. The future benefit streams at the time of the sale of each productive unit reflect the Department's allocation over time of prior subsidies to SSAB in accordance with the declining balance methodology (*see Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 64568 (December 8, 1997) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 63 FR 18367 (April 15, 1998)), and reflect also the effect of prior spin-offs of SSAB productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of SSAB's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies

received by SSAB in each year from fiscal year 1979 through fiscal year 1993 by SSAB's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to the productive unit at the time of sale to arrive at the amount of subsidies allocated to the productive unit being spun-off.

To calculate the subsidies remaining with SSAB after privatization, we performed the following calculations. We first calculated the NPV of the future benefit stream of the subsidies at the time of the sale of the shares. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the ''Privatization'' section of the *General Issues Appendix* (58 FR 37217, 37259). This amount was then subtracted from the amount of the NPV eligible for repayment, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1997, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after privatization. We then divided the results by the company's total sales in 1997.

Allocation Methodology

In the current review, there are no new subsidies. All of the non-recurring grants under review were provided prior to the POR; allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each grant. *See Certain Carbon Steel Products from Sweden; Final Results of Administrative Review,* 66 FR 16549–16550 (April 7, 1997) (*1994 Final Results*).

Analysis of Programs

I. Programs Conferring Subsidies

A. Structural Loans

Under three separate pieces of legislation, SSAB received structural loans for investment in plant and equipment. The loans were disbursed in installments between 1978 and 1983. Three loans were outstanding during the period of review (POR).

According to the terms of the loans, all three structural loans were interest-free for three years from the date of disbursement. After that time, two loans incurred interest at a fixed rate of five percent per annum while the other loan incurred interest at a variable rate subject to change every five years. *See* SAAB's February 16, 1999 Questionnaire Response at page 11–13 (Public Version on file in Room B–099 of the main Commerce Building). The variable interest rate on this loan is set at the rate of the long-term government bonds plus a 0.25 percent margin. After a five-year grace period, the principal is repaid in 20 equal installments at the end of each calendar year.

In the final determination of the original investigation of the subject merchandise, *Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Sweden,* 50 FR 33377 (August 19, 1985) and *1993 Certain Steel Products,* we determined that these loans were received at an interest rate lower than what the recipient would have paid on a comparable commercial loan. We therefore, determined that the loans are countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit from the fixed-rate structural loans, we employed the long-term loan methodology described in the 1994 administrative review of this order. *See 1994 Final Results.* To calculate the benefits of the variable-rate loan, we used the variable-rate long-term loan methodology described in the *1994 Final Results.* As the benchmark, we used SSAB's company-specific long-term interest rates, previously established in *1993 Certain Steel Products.*

We reduced the benefit attributable to the POR from the fixed-rate structural loans according to the methodology outlined in the ''Privatization'' section above. We then aggregated the benefits for the three loans (fixed interest rate and variable interest rate) and divided the results by SSAB's total sales for 1997. On this basis, we preliminarily determine the net subsidy from the three structural loans to be 0.12 percent *ad valorem.*

B. Forgiven Reconstruction Loans

The Government of Sweden (GOS) provided reconstruction loans to SSAB between 1979 and 1985 to cover operating losses, investment in certain plant and equipment, and for employment promotion purposes. The loans were interest free for three years, after which a fixed interest rate was charged. According to the terms of the loans, up to half of the outstanding amount of the loan could be written off after the second calendar year following the disbursement. The remainder of the loan could be written off entirely at the end of the ninth calendar year after disbursement. Pursuant to the terms of the reconstruction loans, evidence indicated that the GOS wrote off large portions of principal and accrued interest on these loans between 1980 and 1990.

In the *1985 Final Determination* and in *1993 Certain Steel Products,* we determined that forgiveness of these loans is countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit, we treated the written-off portions of the reconstruction loans as countervailable grants received in the years the loans were forgiven and calculated the benefit for the POR from this program using the methodology described in the ''Allocation Methodology'' section above. We reduced the benefits from these grants attributable to the POR according to the methodology outlined in the ''Privatization'' section above. We then divided the results by SSAB's total sales for 1997. On this basis, we preliminarily determine the net subsidy from the three allocable forgiven reconstruction loans to be 0.59 percent *ad valorem.*

II. Other Programs Examined

A. Research and Development Loans and Grants

The Swedish National Board for Industrial and Technical Development (NUTEK) provides research and development loans and grants to Swedish industries for R&D purposes. One type of R&D loan (industrial development loans) is mostly aimed at ''new'' industries such as the biotechnical, electronic, and medical industries. Another type of R&D loan (energy efficiency loans) is directed towards big energy consumers.

The loans accrue interest equal to the official ''discount'' rate plus a premium of 3.75 percent. SSAB had several R&D loans outstanding during the POR on which it did not make either principal or interest payments. To calculate the benefit on these long-term variable rate loans, we used the variable-rate long-term loan methodology described in the *1994 Final Results.* We measured the interest savings on each outstanding loan during the POR using the Department's long-term benchmark.

Because SSAB did not have any long-term loans in 1997, we used as the discount rate the long-term industrial bond rate in Sweden, a benchmark previously established in *1993 Certain Steel Products.* Then we divided the aggregate benefit of these loans by SSAB's total sales for 1997. On this basis, we preliminarily determine that, because the assistance provided under this program would result in a rate of less than 0.005 percent *ad valorem*, and would have no impact on the countervailing duty rate calculated for this POR, it is not necessary to determine whether these loans under NUTEK are specific. *See, e.g. Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995–54996 (October 22, 1997).

In addition, SSAB reported to have received a NUTEK R&D grant for the application and further development of Information Technology concerning improved energy utilization and control of industrial processes. Disbursements of these grants, which were received prior to the POR, did not exceed the 0.5 percent of SSAB's total sales in the year they were received. Therefore, in accordance with our practice, the entire amount was expensed in the year of receipt. See *Cut-to-Length Steel Plate from Belgium; Preliminary Results of Countervailing Duty Review*, 63 FR 48188, 48190 (September 9, 1998). On that basis, we preliminarily determine that it is not necessary to determine whether grants under NUTEK are specific.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for SSAB to be 0.72 percent *ad valorem*.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 61 FR 5378 (February 12, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to Subpart B of 19 CFR 351.224(b), the Department will disclose to the parties of this proceeding within five days after the date of any public announcement or if none within five days after the publication of this notice, the calculations performed in this review. Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with Subpart B of 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 351.213.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17646 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Amended Final Results of Expedited Sunset Review: Iron Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of expedited sunset review: iron metal castings from India.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 12, 1999.

Scope

The merchandise subject to this countervailing duty order are shipments of manhole covers and frames, clean-out covers and frames, and catch basin grates and frames from India. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Summary

On November 2, 1998, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on iron metal castings from India (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On June 1, 1999, the Department issued its final results of the sunset review of the countervailing duty order on iron metal castings from India (64 FR 30316), in which we determined that there was a likelihood of continuation or recurrence of a countervailable subsidy if the order were to be revoked. In this determination, the Department also determined the net subsidy rate likely to prevail if the order were to be revoked.

On June 23, 1999, the Department received allegations, timely filed pursuant to 19 CFR 351.224(c)(2), from the Municipal Castings Fair Trade Council and its individual members (collectively, ''domestic industry'') that the Department made a ministerial error in its final results. The domestic industry alleged that the Department failed to include the subsidy rate for the International Price Reimbursement Scheme (''IPRS'') program in its final results of the sunset review for this case. The domestic industry, citing the *Sunset Policy Bulletin*, stated that the Department normally ''will not make adjustments to the net countervailable subsidy rate for programs that still exist, but were modified subsequent to the order, * * * to eliminate exports to the United States (or subject merchandise) from eligibility.'' The domestic industry argued that Indian foundries that exported heavy castings (subject merchandise) to the United States were simply told not to make claims for IPRS benefits on those castings. Further, the domestic industry argued that there has never been any termination of the IPRS program overall, and the program continues today.

The Department received, on June 30, 1999, a submission on behalf of the Engineering Export Promotion Council of India (''EEPC'') in rebuttal to the ministerial error alleged by the domestic industry. The EEPC argued that the domestic industry was incorrect in stating that the IPRS program continues to exist. The EEPC asserted that the Department has information on the record of the 1994 administrative review segment of this proceeding stating that the Indian Ministry of Commerce withdrew the IPRS, effective April 1, 1994. Further, the EEPC states that this withdrawal applied to all exporters and all products.

On July 2, 1999, the Department received a response from the domestic industry arguing that the EEPC has waived its right to participate in this sunset review before the Department, pursuant to 19 CFR 351.218, and the Department should, therefore, reject the EEPC's June 30, 1999, submission. Furthermore, the domestic industry states that it knows of no finding that the IPRS has been terminated, with respect to all exporters and all products.

After analyzing the domestic industry's June 23, 1999 submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in the final determination concerning the IPRS program. The Department notes that the definition of a ministerial error provides not only for the correction of errors in arithmetic but also for ''any other similar type of unintentional error which the Secretary considers ministerial'' (*see* 19 CFR 351.224(f)). In the Department's final results of the sunset review for this case, we excluded the IPRS program from our net subsidy calculation based on the fact that the Department ''had verified this termination [of the IPRS program] by examining a circular from the Indian Ministry of Commerce which stated that claims were not to be made on exports of castings to the United States and, as such, the Department determined that this constituted termination of the program'' (*see Final Results of Expedited Sunset Review: Iron Metal Castings from India*, 64 FR 30316 (June 7, 1999)). The Department's reliance on this statement for its final determination in the sunset review was in error. As noted above, the Department's *Sunset Policy Bulletin* state that where a program continues to exist, but was modified to eliminate exports to the United States (or subject merchandise) from eligibility, the Department will normally not make adjustments to the net countervailable subsidy rate. The Department's decision to consider the IPRS program terminated based upon the fact that the program had been modified to exclude exports of heavy castings to the United States was, therefore, in error because reliance on modification as a basis for finding a program completely terminated is inconsistent with our *Sunset Policy Bulletin*.

However, based on the domestic industry's ministerial allegation and the EEPC's reply, the Department has reexamined all relevant information pertaining to the termination of the IPRS program. The Department located a submission from the Indian Ministry of Commerce, dated April 4, 1994, which demonstrates that the Government of India has fully and completely eliminated the IPRS program (*see* November 19, 1996 Verification Report for Certain Iron Metal Castings from India, Exhibit EEPC 4, placed on the record of this sunset review on July 2, 1999).[1] Specifically, the Indian Ministry of Commerce states that ''it has been decided to withdraw the International Price Reimbursement Scheme (IPRS) with effect from 01.4.1994, i.e. benefits under the scheme would be available for eligible engineering goods exports shipped up to [sic] 31.3.1994 only.'' (*Id.*) Consistent with our *Sunset Policy Bulletin* (*see* section III.B.3.a), this evidence of the complete and total withdrawal of the IPRS program is the appropriate basis for the Department's finding that the IPRS program is terminated. The Department's correction of its ministerial error, *i.e.*, the appropriate basis for its termination finding, does not change the net subsidy rate reported in the original final determination of this sunset review.[2]

With respect to the domestic industry's argument that, pursuant to 19 CFR 351.218, the Department should reject the June 30, 1999, submission of the EEPC, the Department disagrees. Section 351.218(d)(2)(i) of the Department's regulations provides that if a respondent interested party waives participation in the sunset review before the Department (as the EEPC did), the Department will not accept or consider any unsolicited submissions from that party *during the course of the review*. The EEPC's submission, however, was not made during the course of the sunset review. Rather, the EEPC filed a reply to ministerial error comments made by the domestic industry *after* the Department had issued its final determination in the sunset review.

Section 351.224 of the Act outlines the procedures for the correction of ministerial errors. Specifically, section 351.224(c)(3) of the Act, states that ''replies to comments filed under (c)(1) of this section must be filed within five days after the date on which comments were filed with the Secretary.'' This regulation does not limit who may file

[1] In addition, the Department has placed on the record of this sunset review all relevant information concerning the termination of the IPRS program. This information can be found in the public sunset file of this review in Central Records Unit, Room B–099 of the main Commerce building.

[2] Furthermore, the Department can confirm that no residual benefits exist from this program to Indian producers/exporters of the subject merchandise to the United States (*see* the 1996 and the 1997 Verification Report of Iron Metal Castings from India, placed on the record of this sunset review on July 2, 1999).

replies to ministerial error allegations.[3] Because the submission from the EEPC is timely filed, pursuant to section 351.224(c)(3) of the Act, we have accepted it. Finally, contrary to arguments raised by the domestic industry, acceptance of the EEPC's submission does not result in an inference adverse to the domestic industry; rather the EEPC's submission relates important factual information that is already on the record of this proceeding, *i.e.*, in the 1994 administrative review segment. For these reasons, therefore, the Department finds no reason to reject the EEPC's June 30, 1999, submission.

Amended Final Results of Review

For the reasons stated above, the Department continues to find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed in the Department's final determination of the sunset review of this case (*see Final Results of Expedited Sunset Review: Iron Metal Castings from India,* 64 FR 30316 (June 7, 1999)).

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–17643 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No: 981029270–9156–02]

RIN 0693–ZA26

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Institute of Standards and Technology (NIST) announces the establishment of an accreditation program for laboratories that perform Information Technology (IT) Security Testing in accordance with the National Information Assurance Partnership (NIAP) Common Criteria Evaluation and Validation Scheme based on: (1) ISO/IEC FDIS 15408, and (2) Common Evaluation Methodology for Information Technology Security (CEM), an International draft.

DATES: The evaluation of an initial group of applicant laboratories for accreditation to the ISO/IEC FDIS 15408 and CEM standards will commerce on or about June 30, 1999. Laboratories wishing to be accredited in the first group must submit an application form and pay all required fees. Laboratories whose applications are received will be considered on a when-received basis. The fees are partially refundable if the laboratory's application is withdrawn before its evaluation begins.

ADDRESSES: Laboratories may obtain applications for accreditation for Common Criteria Testing (CCT) by calling 301–975–4016 or by writing to: Information Technology Security Testing (ITST) Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, Maryland 20899–2140.

FOR FURTHER INFORMATION CONTACT: James L. Cigler, Chief, National Voluntary Laboratory Accreditation Program (NVLAP), NIST, 100 Bureau Drive, Stop 2140, Gaithersburg, Maryland 20899–2140. Telephone: 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures and General Requirements (15 CFR Part 285). A request for establishment of the NVLAP Information Technology Security Testing Program and the inclusion of Common Criteria Testing in that program was published in the **Federal Register** on Wednesday, February 17, 1999, 64 FR 7859–7861. At the end of the comment period, May 3, 1999, only one comment was received that did not pertain to the establishment of the program.

Common Criteria Testing

NVLAP will accredit laboratories which demonstrate their competence to perform Common Criteria Testing (CCT) in accordance with protocols specified in ISO/IEC FDIS 15408 and the draft CEM standard.

Cryptographic Modules Testing

NVLAP currently offers accreditation for laboratories conducting testing to Federal Information Processing Standard (FIPS) 140–1 for Cryptographic Modules. This offering will be continued as part of the development of the new Information Technology Security Testing (ITST) program.

Technical Requirements for the Accreditation Process

Specific requirements and criteria address quality systems, staff, facilities and equipment, calibrations, test methods and procedures, manuals, records, and test reports. Laboratory competence will be determined through: (1) On-site assessments of the laboratory by peer assessors, (2) evaluation of background of personnel performing Common Criteria Testing, (3) review of quality and technical documentation, and (4) proficiency testing. Laboratories must meet all NVLAP criteria and requirements in order to become accredited.

Laboratories which apply for accreditation and pay all necessary fees will be required to meet proficiency testing requirements and on-site assessment requirements before initial accreditation can be granted, and will be required to meet ongoing proficiency testing requirements and periodic reassessments to retain accreditation.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The NVLAP application is approved by the Office of Management and Budget under OMB Control No. 0693–0003.

Dated: July 6, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–17661 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061199A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act

[3] While there are no limitations on who may file *replies* to ministerial error allegations, the regulations do provide that only a ''party to the proceeding'' may file ministerial error allegations. *See* 19 CFR 351.224(c)(1) and 19 CFR 351.102 (defining ''party to the proceeding'')

(MMPA), as amended, and implementing regulations, notification is hereby given that a 1-year letter of authorization to take harbor, gray, harp and hooded seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH, was issued to the North Atlantic Energy Service Corporation on July 2, 1999.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Scott Sandorf, Northeast Region (978) 281–9388.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of several species of seals incidental to intake cooling water operations at Seabrook Station nuclear power plant, Seabrook, NH, were published on May 25, 1999 (64 FR 28114), and remain in effect until June 30, 2004.

Issuance of this letter of authorization is based on a finding that the total takings will have a negligible impact on the marine mammal species of the Western North Atlantic.

Dated: July 2, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–17624 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 swing, 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 63 FR 71096, published on December 23, 1998). Also see 63 FR 59942, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 12, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	574,995 dozen.
336/636	563,635 dozen.
341	2,293,257 dozen.
347/348	3,135,706 dozen.
363	29,279,569 numbers.
369–S [2]	1,962,630 kilograms.
641	1,032,554 dozen.
647/648	1,730,761 dozen.
847	470,638 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17565 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 limit for Categories 347/348 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 70107, published on December 18, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 13, 1999, you are directed to increase the current limit for Categories 347/348 to 2,145,005 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing. The guaranteed access level for Categories 347/348 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17567 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Egypt

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 limit for Categories 338/339 is being increased for recrediting of unused special carryforward from 1998.

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 63 FR 71096, published on December 23, 1998). Also see 63 FR 54114, published on October 8, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 1, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 12, 1999, you are directed to increase the limit for Categories 338/339 to 2,763,159 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17568 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 14, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 for carryforward used and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 14, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
226/313	129,440,629 square meters.
334/634	259,256 dozen.
336/636	526,715 dozen.
338	5,254,913 dozen.
339	1,492,003 dozen.
340/640	702,288 dozen of which not more than 263,357 dozen shall be in Categories 340–D/640–D [2].
347/348	873,067 dozen.
351/651	351,143 dozen.
359–C/659–C [3]	1,580,146 kilograms.
363	46,143,936 numbers.
369–F/369–P [4]	2,570,724 kilograms.
369–S [5]	761,728 kilograms.
613/614	25,386,716 square meters.
615	26,766,044 square meters.
625/626/627/628/629	83,859,305 square meters of which not more than 41,929,654 square meters shall be in Category 625; not more than 41,929,654 square meters shall be in Category 626; not more than 41,929,654 square meters shall be in Category 627; not more than 8,675,101 square meters shall be in Category 628; and not more than 41,929,654 square meters shall be in Category 629.
638/639	487,367 dozen.
666–S [6]	4,224,988 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–17566 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

July 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 20, 1999.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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 swing, special shift, carryover, carryforward and carryforward used.

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 Uni ted States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 20, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	996,653 dozen.
331/631	7,012,533 dozen pairs.
333/334	311,393 dozen of which not more than 48,265 dozen shall be in Category 333.
335	180,117 dozen.
336	829,345 dozen.
340/640	1,316,182 dozen.
341/641	944,363 dozen.
342/642	732,236 dozen.
345	226,339 dozen.
350	181,587 dozen.
351/651	798,648 dozen.

Category	Adjusted twelve-month limit [1]
352/652	2,950,437 dozen.
359–C/659–C [2]	1,388,265 kilograms.
361	2,272,912 numbers.
431	192,094 dozen pairs.
433	3,854 dozen.
443	46,184 numbers.
445/446	33,210 dozen.
447	9,234 dozen.
633	60,063 dozen.
634	558,012 dozen.
635	439,520 dozen.
636	1,950,096 dozen.
643	866,217 numbers.
645/646	817,769 dozen.
649	7,619,553 dozen.
650	129,968 dozen.
659–H [3]	1,817,879 kilograms.
847	432,395 dozen.
Group II 200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	198,623,048 square meter equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

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. 99–17569 Filed 7–9–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Employer Support of National Guard and Reserve Training and Service—National Guard and Reserve Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 2,400.

Responses Per Respondent: 1.

Annual Responses: 2,400.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,200.

Needs and Uses: The information collection requirement is necessary to learn about employer tolerance for leaves of absence caused by the departure of National Guard and Reserve members from their workplaces to attend military training or to provide military service. In order to sustain and not to diminish employer support, it is important to learn about employer tolerance of absences due to Guard/Reserve obligations, and how such absences can be least disruptive to the employer when Guard and Reserve members are called to training or service. Respondents are employers, manager, and supervisors with hiring/firing authority within a diverse set of employers, both public and private. Results gathered from this survey will provide military leadership with new and important information to help them plan and manage more effectively, with a better understanding of the limits to removing Guard/Reserve members from their workplaces for military training and service.

Affected Public: Business or Other For-Profit, Not-For-Profit Institutions; Federal Government; State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 1, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17511 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Submission for OMB Review; Comment Request Entitled Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualification Requirements. A request for public comments was published at 64 FR 24598, May 7, 1999. No comments were received.

DATES: Comments may be submitted on or before August 11, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes 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.

The annual reporting burden is estimated as follows: Respondents, *7,882;* responses per respondent, *100;* total annual responses, *788,200;* preparation hours per response, *.25;* and total response burden hours, *197,050*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: July 7, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 99–17564 Filed 7–9–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1999 Summer Study on 21st Century Defense Technology Strategies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1999 Summer Study Task Force on 21st Century Defense Technology Strategies will meet in closed session on August 2–13, 1999 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and consider the broad spectrum of topics, which were addressed in the 1990 DSB Summer Study on ''Research and Development Strategy for the 1990s.'' Of particular concern will be the proliferation of nuclear, chemical, and biological weapons technology and the many means to deliver such weapons.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17513 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Filed Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive /Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Deputy Assistant Director for Staffing, Classification and Executive Resources, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 588–0410.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executive are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1999.

Office of the Secretary of Defense

Chairman

Robert R. Soule

Members

Joseph Angello
Diana Blundell
Thomas Bozek
James Brooks
Jennifer Buck

Bill Campbell
Mark Cancian
Victor Ciardello
Charlie Cook
Eric Coulter
Bob Dorosz
Sheila Dryden
Robert Foster
William Frederick
Warren Hall
Douglas Hansen
Paul Haselbush
Judith Hughes
Ralph Kennedy
Paul Koffsky
Richard Lockhart
George Look
Susan Ludlow-MacMurray
Chuck Magrum
Ronald Mutzelburg
Margaret Myers
Phebe Novakovic
James O'Bryon
Michael Parmentier
Karla Perri
James Reardon
Ron Richards
Richard Ritter
Alina Romanowski
Frank Rush
Patricia Sanders
George Schneiter
Jack Schrader
Wayne Sellman
David Shilling
Robert Snyder
Robert Soule
Nancy Spruill
Richard Sylvester
Robert Taylor
Nelson Toye
Thomas Troyano
Albert Volkman
Austin Yamada
Karen Yannello
Michael Yoemans

Dated: July 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–17512 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Notification of Hours of Operating for Armed Forces Discharge Review/ Correction Board Reading Room

AGENCY: Army Review Board Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with DoD Directive 1332.28D3f, the Secretary of the Army hereby gives notice of the hours of operation regarding the Reading Room. Effective 1 August 1999, the hours of operation for the Reading Room will be from 7:30 a.m. to 4:00 p.m. Monday thru Friday, with the exception of being closed on federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Troxell, Army Review Board Agency 1941 Jefferson Davis Highway, Crystal Mall #4, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Discharge Review Board (DRB) documents are made available for public inspection and copying, and are located in the Reading Room. The documents are indexed in a usable and concise format so as to enable the public, the applicant and/or those who represent applicants, to locate a decision document that is similar in circumstances or reasons for which the DRB or the Secretary concerned granted or denied relief.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–17619 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Exclusive or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DOD.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Paratek Microwave, Inc., a corporation having its principle place of business at 6935 Oakland Mills Road, Suite N, Columbia, Maryland 21045–4719, an exclusive or partially exclusive licenses under U.S. Patents 5,334,958, issued 2 August 1994, entitled, ''Microwave Ferroelectric Phase Shifters and Methods for Fabricating the same,'' 5,680,141; issued 21 October 1997, entitled, ''Temperature Calibration System For A Ferroelectric Phase Shifting Array Antenna,'' 5,427,988; issued 17 June 1995, entitled ''Ceramic Ferroelectric Composite Material—BSTO–MGO;'' Patent Application ARL Docket No.: ARL 97–01, entitled ''Ferroelectric Thin Film composites Made by Metallo-Oranic Decomposition.'' Patent Application ARL Docket No.: ARL 97–12, entitled, ''Ceramic Ferrite Ferroelectric Composite Material,'' Patent Application ARL Docket No.: ARL 98–47, entitled, ''Ceramic Ferroelectric Composite Material with Enhanced Electric properties, BSTO/MG Based Compound—Rare Earth Oxide.

Anyone wishing to object to the granting of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Technology Transfer, ATTN: AMSRL–CS–TT, Aberdeen Proving Ground, Maryland 21005–5055, telephone number: (410) 278–5028, Fax (410) 278–5820.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–17620 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 11, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC-PAD-RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–103a SAFM

SYSTEM NAME:

Contractor Indebtedness Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–103b SAFM

SYSTEM NAME:

Subsidary Ledger Files (Accounts Receivable) *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–104–1a SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Army-Retired Pay *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7347b, Defense Military Retiree and Annuity Pay System.

A0037–104–1b SAFM

SYSTEM NAME:

Debt Management System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–104–3 DASG

SYSTEM NAME:

Health Professions Scholarship Program *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7340, Defense Joint Military Pay System-Active Component.

A0037–104–3b SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Active Army (JUMPS-JSS) *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7340, Defense Joint Military Pay System-Active Component.

A0037–104–3c SAFM

SYSTEM NAME:

Joint Uniform Military Pay System-Reserve Components-Army *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7346, Defense Joint Military Pay System-Reserve Component.

A0037–105b SAFM

SYSTEM NAME:

Military and Civilian Waiver Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under two Defense Finance and Accounting Service Privacy Act notices T7332, Defense Debt Management System and T5015a, Military Pay Correction Case Files.

A0037–105c SAFM

SYSTEM NAME:

Bankruptcy Processing Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332c, Bankruptcy Processing Files.

A0037–107a SAFM

SYSTEM NAME:

Absentee Apprehension/Reward/Expenses Payment System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0037–108 CE

SYSTEM NAME:

Corps of Engineers Debt Collection System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

A0055–71 SAFM

SYSTEM NAME:

Household Goods Shipment Excess Cost Collection Files *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7332, Defense Debt Management System.

[FR Doc. 99–17515 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on August 11, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: July 6, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS)*(October 15, 1998, 63 FR 55373).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entire entry and replace with 'Primary Location: Naval Postgraduate School Computer center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the second, third, and fourth paragraphs and replace with 'Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization,but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.'

* * * * *

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Primary Location: Naval Postgraduate School Computer center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization,but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (e.g., Defense Protective Service, military and civilian police, military criminal investigation services or commands); DoD organizations and military commands; Legal and judicial authority (e.g., Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (e.g., the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement

information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (e.g., Social Security Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies.

(2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufactures or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices *do not* apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, incident number, or any other data element contained in system.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–17514 Filed 7–9–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Wappapello Lake Operation and Maintenance, Wayne and Butler Counties, MO

AGENCY: U.S. Army Corps of Engineers, St. Louis District, DOD.

ACTION: Notice of intent.

SUMMARY: St. Louis District, U.S. Army Corps of Engineers is proposing an Environmental Impact Statement (EIS) for the Continuing Operation and Maintenance of Wappapello Lake on the St. Francis River, Wayne and Butler counties, Missouri. Even though this project was completed before the National Environmental Policy Act of 1969, it is the intent of the Corps to prepare an EIS on current operations, which have an impact on notable environmental resources.

ADDRESSES: U.S. Army Corps of Engineers, St. Louis District, Planning, Programs, and Project Management Division, Environmental and Economic Analysis Branch, 1222 Spruce St., St. Louis MO 63103–2833.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Neher, (314) 331–8880, Lynn.N.Neher@mvs02.usace.army.mil or Mr. Daniel Ragland, (314) 331–8461, Daniel.V.Ragland @mvs02.usace.army.mil.

SUPPLEMENTARY INFORMATION: Wappapello Lake and Dam were part of the St. Francis Basin Project that was

authorized by the Flood Control Act of 1936 (Overton Act). Construction of the dam was completed in 1941 with an authorized purpose of flood control. Development and use of flood control reservoirs for recreational and related purposes were authorized by Section 4 of the Flood Control Act approved 22 December 1944, as amended by Section 209 of the Flood Control Act of 1954 approved 3 December 1954. A final EIS was completed for the entire St. Francis Basin Project in July 1973. Wappapello Lake and Dam were included in this EIS as part of the St. Francis Basin Project's purpose of flood control, but general O&M details for Wappapello Lake and Dam was not addressed. Wappapello Lake and Dam have a range of operational practices within the authorized purpose of the project. Since its inception, the development and management of Wappapello Lake and Dam have included flood control, recreational facility development and access, forestry, fish and wildlife management and protection of natural and cultural resources.

Alternatives

The Corps of Engineers will evaluate reasonable alternatives for the O&M of Wappapello Lake and Dam. The no action alternative will be to not change the current O&M practices. The action alternatives will address proposed changes to the current O&M practices concerning the management of the project's natural resources and recreational opportunities.

Scoping and Public Involvement

Public involvement will be sought during scoping and conduct of the study in accordance with NEPA procedures. A public scoping process will help to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. The Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all Federal, state and local agencies, Native American tribes, and other interested private organizations or individuals, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, probable significant environmental impacts and permits or other approvals that may be required.

The following key areas have been identified to be analyzed in-depth in the draft EIS:

1. Geology and Engineering Design
2. Water Management
3. Water Quality
4. Fisheries
5. Wildlife
6. Wetlands
7. Forest Management
8. Cultural Resources
9. Socioeconomic Resources
10. Recreation
11. Hydroelectric
12. Utility right-of-ways

Other Environmental Review and Coordination Requirements

All review and coordination requirements will be fulfilled via this NEPA process. On-going operations of the lake and dam are continually coordinated with agencies and interested publics.

Scoping Meeting

A scoping meeting for this EIS will be held in conjunction with a public workshop that will be held in July or August 1999 for the Lake's Master Plan Update. The exact date has not been set and can be requested by calling the Lake's office at (573) 222–8562.

Availability of Draft EIS

The draft EIS is scheduled for release in the spring of 2000.

Thomas J. Hodgini,

COL, EN, Commanding.

[FR Doc. 99–17621 Filed 7–9–99; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–357–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 29, 1999, ANR Pipeline Co. (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed at Appendix A to the filing, to be effective August 1, 1999.

ANR states that this filing is made in compliance with Order No. 587–K which completed the Commission's adoption of Version 1.3 of the Gas Industry Standards Boards' Business Practice Standards. In addition, ANR is making housekeeping-type corrections to changes that were made previously to comply with Order Nos. 587 and 587–B.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17578 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–271–002]

East Tennessee Natural Gas Co.; Notice of Compliance Filing

July 6, 1999.

Take notice that on June 28, 1999, East Tennessee Natural Gas Co. (East Tennessee), filed a report pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff and in compliance with the June 30, 1994 Letter Order in Docket No. RP94–271. The referenced tariff provision and the Letter Order require East Tennessee to file to recover trailing costs in East Tennessee's Account No. 191 resulting from the resolution of Tennessee Gas Pipeline Company's (''Tennessee'') proceedings in Docket Nos. RP94–201–000 and RP93–47–000 within 60 days of Tennessee filing its final PGA report. Tennessee filed its report on April 29, 1999.

East Tennessee states that since East Tennessee's last report, East Tennessee received a refund from Tennessee in April 1995, which East Tennessee flowed through to its customers, and that Tennessee has billed East Tennessee $25,508.00, which East Tennessee does not propose to pass on to its customers.

East Tennessee also submits pro forma tariff sheets to reflect the

elimination of the PGA provisions of its FERC Gas Tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17576 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective August 1, 1999.

First Revised Sheet No. 251
First Revised Sheet No. 287
First Revised Sheet No. 288
First Revised Sheet No. 289
First Revised Sheet No. 308

Equitrans states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 adopting new and revised standards promulgated by ther Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Equitrans is filing to incorporate by reference the new and revised standards, except for standards 2.3.16 and 4.3.23 which are incorporated verbatim in Sections 12.4 and 26.3, respectively, of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission'a Rules and Regualtions. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the approprite 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 avaiable for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17584 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–004]

Granite State Gas Transmission, Inc.; Notice of Report

July 6, 1999.

Take notice that on May 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a report, pursuant to Article 34.6 of its General Terms and Conditions, detailing billed lease costs and surcharge revenue collected in conjunctionn with the Portland Pipe Line Company third lease extension. Article 34.6 requires that Granite State reports to the Commission 30 days after the lease termination showing all lease related costs billed to Granite State and all revenue collected under the special surcharge, together with carrying charges.

Granite State states that it accumulated revenues of $10,135,086.09 during the one year period of the surcharge and incurred lease costs of $8,012,680.92.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 13, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17577 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–360–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 11 and Sixth Revised Sheet No. 50C, proposed to be effective August 1, 1999.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–K issued on April 2, 1999, in Docket No. RM96–1–011. 87 FERC § 61,021 (1999). In Order No. 587–K, the Commission adopted Version 1.3 of the standards promulgated by the Gas Industry Standards Board, and established an implementation date of August 1, 1999 for these standards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17581 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–57–000]

Kentucky West Virginia Gas Co., L.L.C.; Notice of Refund Report

July 6, 1999.

Take notice that on June 30, 1999, Kentucky West Virginia Gas Co., L.L.C. (Kentucky West) filed a Report summarizing the refunds of GRI overcollections which were credited to the June billing invoice of its sole eligible customer.

Kentucky West states that on May 29, 1998, it received a refund from GRI of $67,004 for overcollections of Kentucky West 1998 GRI funding level. Kentucky West states that it credited this amount to the account of its sole eligible firm customer.

Kentucky West states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17575 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–361–000]

Kentucky West Virginia Gas Co, L.L.C., Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Kentucky West Virginia Gas Co., L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 121, and Second Revised Sheet No. 174, to become effective August 1, 1999.

Kentucky West states that the purpose of this filing is to comply with the Commission's Order No. 587–K issued on April 2, 1999 in Docket No. RM96–1–011 adopting new and revised standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Kentucky West is filing to incorporate by reference the new and revised standards, except for standard 2.3.16 which is incorporated verbatim in Section 13.4(b)(i) and of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17582 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–16–000]

National Fuel Gas Supply Corp.; Notice of Tariff Filing

July 6, 1999.

Take notice that on June 30, 1999, National Fuel Gas Supply Corp. (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become, effective July 1, 1999:

Seventeenth Revised Sheet No. 9

National assets that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 9.15 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17585 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–362–000]

Nora Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 30, 1999, Nora Transmission Co., (Nora) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 121, and Fourth Revised Sheet No. 173, to become effective August 1, 1999.

Nora states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Order No. 587–K issued on April 2, 1999, in Docket No. RM96–1–011 adopting new and revised standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to follow certain new and revised business practice procedures. The Commission directed pipelines to make a filing adopting Version 1.3 of the GISB standards which revises the standards in the area of confirmation practices, data sets and establishes standardization of the information provided on Internet Web Sites by August 1, 1999. Nora is filing to incorporate by reference the new and revised standards, except for standard 2.3.16 which is incorporated verbatim in Section 13.4(b)(1) and of the General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17583 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–159–002]

Phelps Dodge Corporation v. El Paso Natural Gas Company, Notice Extending Period To Convene Meeting and Setting Date for Convening Session

July 6, 1999.

By Order issued June 16, 1999, *Phelps Dodge Corporation* v. *El Paso Natural Gas Company*, 87 FERC ¶ 61,297, the Commission directed its Dispute Resolution Service to convene a meeting of the parties to arrange a process that may foster negotiation and agreement on the disputes presented in the above captioned proceeding. The meeting was to be held within 30 days of issuance of the June 16th Order. The Director of the Dispute Resolution Proceeding contacted representatives of Phelps Dodge Corporation and El Paso Natural Gas Company and has determined that due to conflicts with filings in other proceedings, the 30-day period to convene should be extended. Accordingly, the period to convene the parties is extended until July 23, 1999.

The Commission's Dispute Resolution Service will conduct a convening session on July 21, 1999, commencing at 10:00 a.m., in Room 3M–3, at the Commission's offices in Washington, DC. The convening session will cover what processes can be taken to reach a consensual agreement, including whether to use an alternative dispute resolution process and/or an appropriate third party neutral.

All parties are invited to attend. If a party has any questions, please call Richard Miles, the Director of the Office of the Dispute Resolution Service. His telephone number is 202–208–0702 and his E-mail address is richard.miles@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17573 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–56–000]

Transcontinental Gas Pipe Line Corp.; Notice of Refund Report

July 6, 1999.

Take notice on June 29, 1999, Transcontinental Gas Pipe Line Corp. (Transco) refunded amounts to eligible shippers via Mail or wire transfer based on non-discounted GRI demand amounts paid during the year ended December 31, 1998. The amounts refunded by Transco resulted from refunds made to Transco by the Gas Research Institute (GRI).

Transco states that copies of this filing are being served to each affected customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before July 13, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17574 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–358–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1999.

Take notice that on June 29, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1999.

First Revised Sheet Nos. 213 and 230A
Second Revised Sheet No. 230B
Third Revised Sheet No. 297

Williams states that on April 2, 1999, the Commission issued Order No. 587–K (Order). The Order incorporated by reference, in Section 284.106(b)(1)(i), Version 1.3 of the standards promulgated July 31, 1998, by the Gas Industry Standards Board (GISB). The

Commission also established August 1, 1999, as the implementation date of Version 1.3 of the standards adopted in Order No. 587–K. Williams states that the purpose of this filing is to revise the tariff in compliance with the Order.

Williams states that copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17579 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–359–000]

Young Gas Storage Co., Ltd.; Notice of Tariff Filing

July 6, 1999.

Take notice that on June 29, 1999, Young Gas Storage Co., Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 1999.

Young states that the purpose of this compliance filing is to conform Young's tariff to requirements of Order No. 587–K. Order No. 587–K requires interstate pipelines transporting pursuant to Section 284.223 of the Commission's Regulations to conform their tariffs to the most recent version of the Gas Industry Standards Board standards, Version 1.3 promulgated July 31, 1998.

Young further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–17580 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF99–3021–000, et al.]

Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

July 6, 1999.

Take notice that the following filings have been made with the Commission:

1. Southeastern Power Administration

[Docket No. EF99–3021–000]

Take notice that on July 1, 1999 , the Secretary of the Department of Energy confirmed and approved Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E, CK–1–D, CTV–1–D, and SJ–1–A for power from Southeastern Power Administration's (Southeastern) Cumberland System of Projects. The approval extends through June 30, 2004.

The Deputy Secretary states that the Commission, by order issued December 14, 1994, in Docket No. EF94–3021–000, and August 11, 1997, in Docket No. EF97–3021, confirmed and approved Rate Schedules CBR–1–C, CSI–1–C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, CTV–1–C, and SJ–1.

Southeastern proposes in the instant filing to replace these rate schedules.

Comment date: July 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, et al.

[Docket No. EC99–70–000]

Take notice that on July 1, 1999, New England Power Company (NEP) and its affiliates holding jurisdictional assets (Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and AllEnergy Marketing Company, L.L.C.) (collectively, the NEES Companies), Montaup Electric Company and its affiliates holding jurisdictional assets (Blackstone Valley Electric Company, Eastern Edison Company (Eastern Edison), Newport Electric Corporation) (collectively, the ''EUA Companies''), and Research Drive LLC submitted a Supplement to their Application in the above referenced docket. The proceeding in the above-referenced docket seeks the Commission's approval and related authorizations to effectuate the merger involving New England Electric System (NEES), the parent company of the NEES Companies, and Eastern Utilities Associates (EUA), the parent company of the EUA Companies (Merger).

The Supplement explains that currently 100% of the common stock of Montaup is held by Eastern Edison, which in turn is wholly owned by EUA. Independent of and prior to the closing of the Merger, Eastern Edison will transfer all of the common stock of Montaup to EUA so that EUA will become the direct parent of Montaup. The Supplement states that this independent internal corporate restructuring of Montaup's parent companies has no impact on the Merger, but is being filed to make certain that the discussion of Montaup's corporate structure in the original Application remains accurate.

In addition, the Supplement states that to the extent the Commission determines that this internal corporate restructuring of Montaup's parent companies qualifies as a disposition of control of a jurisdictional entity that requires Commission approval under Section 203 of the FPA, the Applicants request such approval.

Finally, the Applicants included for filing copies of the following material that the Applicants request be made part of Exhibit G to the Application: Application of Montaup Electric Company and New England Power Company for Transfer of Licenses and

Ownership Interests before the Nuclear Regulatory Commission (consisting of three volumes).

The Applicants have served copies of the filing on the state commissions of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, all parties on the service list of EC99–70, and all parties on the service list on Docket No. ER99–2832.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company, et al.

[Docket No. EC99–90–000]

Take notice that on June 29, 1999, Illinois Power Company, Illinova Power Marketing, Inc., and Illinova Corporation filed a joint application requesting that the Commission: (1) Provide all approvals necessary for the disposition of certain jurisdictional facilities under Section 203 of the Federal Power Act; or (2) disclaim jurisdiction over the proposed transaction.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Power Services Company

[Docket No. ER95–428–020]

Take notice that on June 30, 1999, El Paso Power Services Company (EPPS), tendered for filing a notice of changes in status and a request to file a revised market analysis on a triennial basis.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. TransAlta Energy Marketing Corp.; TransAlta Energy Marketing (U.S.) Inc.; TransAlta Energy Marketing (California) Inc.

[Docket Nos. ER96–1316–013; ER98–3184–004; and ER99–2343–001]

Take notice that on June 30, 1999, TransAlta Energy Marketing Corp. (TEMC), tendered for filing a three year update to its market power study in compliance with the Commission's Order in Docket No. ER96–1615–1316, granting TEMC market rate authority. TEMC requests that the filed three year update also be deemed to satisfy the three year update obligations of its two marketing affiliates.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Empire District Electric Company

[Docket No. ER99–1757–001]

Take notice that on June 30, 1999, The Empire District Electric Company (Empire District), tendered for filing a notification of change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority. Empire District informed the Commission of a planned merger between Empire District and UtiliCorp United, Inc.

Comment date: July 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER99–3398–000]

Take notice that June 28, 1999, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Strategic Energy, Ltd. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company

[Docket No. ER99–3399–000]

Take notice that on June 29, 1999, Ohio Edison Company tendered for filing revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc., under FERC Electric Tariff, Second Revised Volume No.2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER99–3400–000]

Take notice that on June 29, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with L.A. Department of Water and Power.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective June 28, 1999.

A copy of this filing was caused to be served upon L.A. Department of Water and Power, as noted in the filing letter.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–3401–000]

Take notice that on June 29, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date June 23, 1999.

Copies of the filing have been served on Wisconsin Public Power, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3402–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Columbia Energy Power Marketing Corp., (Columbia).

Con Edison states that a copy of this filing has been served by mail upon Columbia.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3403–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3404–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3405–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3406–000]

Take notice that on June 29, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Energy Lovett, L.L.C.

[Docket No. ER99–3410–000]

Take notice that on June 29, 1999, Southern Energy Lovett, L.L.C. (Southern Lovett), tendered for filing the following agreements as a long-term service agreements under its Market Rate Tariff accepted by the Commission in the Docket No. ER99–2043-000:

1. Eastern Load Pocket Call Option Agreement Between Orange and Rockland Utilities, Inc. and Southern Energy NY-GEN, L.L.C., dated November 24, 1998, as amended, June 14, 1999.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Energy Cooperative of Western New York, Inc.

[Docket No. ER99–3411–000]

Take notice that on June 29, 1999, Energy Cooperative of Western New York, Inc. (ECWNY), petitioned the Commission for acceptance of ECWNY Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECWNY intends to engage in wholesale electric power and energy purchased and sales as a marketer. ECWNY is not in the business of generating or transmitting electric power.

The Energy Cooperative of Western New York, Inc., is a not-for-profit corporation created by a group of businesses (both industrial and commercial). The Co-op's sole mission is to buy energy for its members at a low cost. It has met all the requirements of the PSC, Public Service Commission, of New York to offer this service to its members.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corporation

[Docket No. ER99–3412–000]

Take notice that on June 28, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with El Paso Power Services Company under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on July 1, 1999.

Comment date: July 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–3413–000]

Take notice that on June 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 of the Participating Generator Agreement between the ISO and California Department of Water Resources (CDWR). The ISO states that the amendment revises Schedule 1 to incorporate information about the technical characteristics of CDWR's generator units.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Energy, Inc.

[Docket No. ER99–3414–000]

Take notice that on June 29, 1999, Consolidated Edison Energy, Inc. (CEEI), tendered for filing an amendment to Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff to include the sale of ancillary services at market-based rates.

CEEI states that a copy of this filing has been served by mail upon The New York State Public Service Commission and those customers taking service under Consolidated Edison Energy FERC Electric Rate Schedule No. 1, Market Based Rate Tariff.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER99–3415–000]

Take notice that on June 29, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 of the Participating Generator Agreement between the ISO and Texaco Exploration and Production Inc. (Texaco). The ISO states that the amendment revises Schedule 1 to incorporate information about the technical characteristics of and limitations on Texaco's facilities.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–17572 Filed 7–9–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 7, 1999.

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: July 14, 1999, 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, 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—723rd Meeting—July 14, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2113, 114, WISCONSIN VALLEY IMPROVEMENT COMPANY

CAH–2.
DOCKET# P–2404, 021, THUNDER BAY POWER COMPANY
OTHER#S P–2419, 010, THUNDER BAY POWER COMPANY

CAH–3.
DOCKET# P–2584, 025, ROCHESTER GAS & ELECTRIC CORPORATION

CAH–4.
DOCKET# P–2496, 042, EUGENE WATER AND ELECTRIC BOARD

CAH–5.
DOCKET# P–6879, 021, SOUTHEASTERN HYDRO-POWER, INC.

CAH–6.
DOCKET# P–7115, 017, SOUTHEASTERN HYDRO-POWER, INC. AND HOMESTEAD ENERGY RESOURCES, LLC

CAH–7.
DOCKET# P–5, 041, MONTANA POWER COMPANY, CONFEDERATED SALISH AND KOOTENAI TRIBES

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–1119, 000, FIRSTENERGY TRADING & POWER MARKETING, INC.
OTHER#S ER99–3063, 000, FIRSTENERGY TRADING SERVICES, INC.

CAE–2.
DOCKET# ER99–2968, 000, NRG NORTHEAST POWER MARKETING, LLC
OTHER#S ER99–2879, 000, FRONT RANGE ENERGY ASSOCIATES, LLC
ER99–2984, 000, GREEN COUNTRY ENERGY, LLC
ER99–2992, 000, TENASKA GATEWAY PARTNERS, LTD.
ER99–3005, 000, COAST ENERGY GROUP
ER99–3050, 000, LITTLE BAY POWER CORPORATION
ER99–3077, 000, COLORADO POWER PARTNERS
ER99–3086, 000, AMERICAN ATLAS #1, LTD., LLLP
ER99–3098, 000, EGC 1999 HOLDING COMPANY, LP

CAE–3.
DOCKET# ER99–2967, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–4.
DOCKET# ER99–2028, 002, PJM INTERCONNECTION, L.L.C.

CAE–5.
DOCKET# ER99–3025, 000, PUBLIC SERVICE COMPANY OF COLORADO

CAE–6.
DOCKET# ER99–2997, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

CAE–7.
DOCKET# ER99–2792, 000, ARCHER DANIELS MIDLAND

CAE–8.
DOCKET# ER99–3063, 000, FIRSTENERGY TRADING SERVICES, INC.

CAE–9.
DOCKET# ER99–2931, 000, NEW ENGLAND POWER POOL

CAE–10.
DOCKET# ER99–3043, 000, ENTERGY OPERATING COMPANIES

CAE–11.
OMITTED

CAE–12.
DOCKET# OA96–78, 000, DETROIT EDISON COMPANY

CAE–13.
DOCKET# ER98–1057, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–1057, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1057, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1058, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–1058, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2199, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–4106, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–4107, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER99–189, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER99–294, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–14.
DOCKET# ER96–58, 004, ALLEGHENY POWER SERVICE CORPORATION
OTHER#S ER99–237 003, ALLEGHENY POWER SERVICE CORPORATION

CAE–15.
DOCKET# ER95–1042, 000, SYSTEM ENERGY RESOURCES, INC.

CAE–16.
DOCKET# ER99–2892, 000, NEW ENGLAND POWER POOL
OTHER#S ER99–1142, 005, NEW ENGLAND POWER POOL

CAE–17.
DOCKET# EL99–10, 003, CITY OF LAS CRUCES, NEW MEXICO V. EL PASO ELECTRIC COMPANY

CAE–18.
DOCKET# EC99–1, 001, SIERRA PACIFIC POWER COMPANY AND NEVADA POWER COMPANY
OTHER#S ER99–34, 001, SIERRA PACIFIC POWER COMPANY AND NEVADA POWER COMPANY

CAE–19.
DOCKET# RM87–3, 035, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)
OTHER#S RM87–3, 036, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)
RM87–3, 037, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (KOCH ENERGY TRADING, INC., ET AL.)

CAE–20.
DOCKET# EL99–15, 001, SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
OTHER#S ER99–913, 001, SITHE NEW ENGLAND HOLDINGS, LLC AND SITHE NEW BOSTON, LLC V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.

CAE–21.
DOCKET# EL98–74, 000, SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION V. ENTERGY SERVICES, INC.
OTHER#S ER98–2910, 000, ENTERGY SERVICES, INC.

CAE–22.

DOCKET# ER99–1969, 001, ENTERGY OPERATING COMPANIES
OTHER#S ER99–1986, 001, VIRGINIA ELECTRIC AND POWER COMPANY
ER99–1987, 001, DAYTON POWER AND LIGHT COMPANY
ER99–1998, 001, WESTERN RESOURCES, INC.
ER99–2000, 001, SOUTHERN COMPANIES SERVICES, INC.
ER99–2003, 001, FLORIDA POWER CORPORATION, FLORIDA POWER & LIGHT COMPANY AND TAMPA ELECTRIC COMPANY
ER99–2010, 001, PJM INTERCONNECTION, L.L.C.
ER99–2011, 001, DUKE ENERGY CORPORATION
ER99–2016, 001, SOUTH CAROLINA ELECTRIC & GAS COMPANY
ER99–2035, 001, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
ER99–2038, 001, SOUTHWEST POWER POOL, INC.
ER99–2040, 001, THE UNITED ILLUMINATING COMPANY
ER99–2075, 001, NORTHERN INDIANA PUBLIC SERVICE COMPANY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP99–282, 001, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–2.
DOCKET# RP99–335, 000, TRANSWESTERN PIPELINE COMPANY
CAG–3.
DOCKET# RP99–342, 000, EL PASO NATURAL GAS COMPANY
CAG–4.
DOCKET# RP98–361, 002, EQUITRANS, L.P.
CAG–5.
DOCKET# RP99–251, 001, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP99–253, 001, SOUTHERN NATURAL GAS COMPANY
CAG–6.
DOCKET# RP99–297, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP99–334, 000, SOUTHERN NATURAL GAS COMPANY
CAG–8.
DOCKET# RP98–203, 004, NORTHERN NATURAL GAS COMPANY
OTHER#S RP99–31, 001, NORTHERN NATURAL GAS COMPANY
CAG–9.
DOCKET# RP99–111, 001, KOCH GATEWAY PIPELINE COMPANY
CAG–10.
DOCKET# RP93–5, 031, NORTHWEST PIPELINE CORPORATION
OTHER#S RP93–96, 006, NORTHWEST PIPELINE CORPORATION
CAG–11.
DOCKET# RS92–11, 024, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–12.
DOCKET# MG99–15, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–13.
DOCKET# MG99–19, 000, PINE NEEDLE LNG COMPANY, L.L.C.
CAG–14.
DOCKET# MG99–21, 000, MISSISSIPPI CANYON GAS PIPELINE, L.L.C.
CAG–15.
DOCKET# MG99–22, 000, NAUTILUS PIPELINE COMPANY, L.L.C.
CAG–16.
DOCKET# CP99–61, 001, TRISTATE PIPELINE, L.L.C.
OTHER#S CP99–62, 001, TRISTATE PIPELINE, L.L.C.
CP99–63, 001, TRISTATE PIPELINE, L.L.C.
CP99–64, 001, TRISTATE PIPELINE, L.L.C.
CAG–17.
DOCKET# CP99–178, 000, MIDAMERICAN ENERGY COMPANY
CAG–18.
DOCKET# CP99–218, 000, ANR PIPELINE COMPANY
CAG–19.
DOCKET# PR99–4, 002, CONSUMERS ENERGY 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.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 99–17751 Filed 7–8–99; 11:51 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Robert D. Willis Power Rate Change

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment period.

SUMMARY: The Administrator, Southwestern, has prepared current and revised 1999 Power Repayment Studies for the Robert D. Willis (Willis) project which show the need for an increase in annual revenues required to meet cost recovery criteria. The increase in the revenues required is the result of an increase in the amount of large maintenance items within the Operations and Maintenance costs estimated by Corps of Engineers. The Administrator has also developed a proposed rate schedule for the isolated Willis project to recover the required revenues. The proposed rate for the Willis project would increase annual revenues approximately 11.5 percent from $302,928 to $337,932 beginning October 1, 1999.

DATES: Southwestern is conducting this 30 day public notice and comment period as prescribed by 10 CFR 903.14(d). The consultation and comment period will begin on the date of publication of this **Federal Register** and will end August 11, 1999. The Public Information Forum will be held (if requested) on July 20, 1999, 1:00 p.m., Central Daylight Time in Southwestern's offices, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

ADDRESSES: Ten copies of any written comments should be submitted to: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, (918) 595–6696, reeves@swpa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, through the Department of Energy Organization Act, P.L. 95–91, dated August 4, 1977, and Southwestern Power Administration's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The

Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, Sam Rayburn Municipal Power Agency (SRMPA), receives the entire output of the project. The SRMPA contract is for a period of 50 years as a result of SRMPA's funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its isolated project determination.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $302,928. This Power Repayment Study, like the previous year's, includes estimates for both Southwestern's and the Corps' portions of the unfunded Civil Service Retirement Service and post retirement life/health costs. The study indicated that maintaining the current rate will create a revenue deficit for the project. This is primarily a result of the Corps of Engineers' increase of Large Maintenance items included in the estimated Operations and Maintenance cost for the Willis Project. The Revised Power Repayment Study for the isolated Willis project shows that an increase of $35,004 (a 11.5 percent increase) annually will satisfy repayment criteria. This increase would change annual revenues produced by the Willis Project from $302,928 to $337,932 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Willis project. If you desire a copy of the Repayment Study Data Package for the Willis project, submit your request to the information contact listed above.

A Public Information Forum is scheduled to be held July 20, 1999. The Public Information Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4:00 p.m., Central Daylight Time, Thursday, July 15, 1999, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held. A transcript of the Forum will be made. Copies of the transcripts may be obtained, for a fee, directly from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, also for a fee. Written comments on the proposed rates for the project are due on or before August 11, 1999. Written comments should be submitted to the Assistant Administrator as indicated above.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Willis project, in support of the proposed rates, to the Secretary of Energy for confirmation and approval on an interim basis and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 28th day of June, 1999.

Michael A. Deihl,

Administrator.

[FR Doc. 99–17656 Filed 7–9–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–7]

Agency Information Collection Activities; National Emission Standards for Benzene Emissions From Coke By-Product Recovery Plants (Subpart L), EPA ICR No. 1080–10, OMB Control No. 2060–0185

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before September 10, 1999.

ADDRESSES: U.S. Environmental Protection Agency, Mail code 2223A, OECA/OC/METD, 401 M. St., S.W., Washington, D.C. 20460. A hard copy of the ICR may be obtained without charge by calling Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1080.10. This information may also be acquired electronically through the Internet Web site at www.epa.gov/fedrgstr.

FOR FURTHER INFORMATION CONTACT: For specific information on the ICR contact Maria Malave at (202) 564–7027 or via E-mail to (MALAVE.MARIA@EPAMAIL.EPA.GOV.), EPA ICR No. 1080–10, OMB No. 2060–0185.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information requirement; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

ICR

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Title: The National Emission Standards for Benzene Emissions from Coke By-Product Recovery Plants (Subpart L), EPA ICR No 1080–10, OMB Control No. 2060–0185; expiration date is July 31, 1999.

Affected Entities: These standards apply to sources at furnace and foundry coke by-product recovery plants that store benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, and ASTM D 835–85 for Refined Benzene-535 and ASTM D 4734–87 for Refined Benzene-545, which are codified as separate subparts under 40 CFR part 61.

Abstract: The National Emissions Standards for Benzene Emissions form Coke By-product Recovery Plants were proposed by EPA on June 6, 1984. Subsequently, the coke by-product recovery plants rule was promulgated September 14, 1989 and amended September 19, 1991. This rule relies on the capture of benzene emissions by installing closed systems, barrier fluid degassing systems, closed-vent systems to a control device, closed purge systems to a control device, seal systems, and by monitoring equipment to repair leaks as soon as practical. It requires that owners or operators of furnace and foundry coke by-product recovery plants to comply with the following monitoring, recordkeeping and reporting requirements:

Monitoring requirements include:

(1) Semiannual inspections and annual maintenance inspections.

(2) Checks for equipment leaks according to test methods and procedures specified in section 61.245.

(3) Monitor organic compound concentration levels that are reasonable indicators of benzene concentration; and

(4) Control equipment operation and maintenance.

Recordkeeping requirements include:

(1) A startup, shutdown, and malfunction plan.

(2) A coke oven emission control work practice plan.

(3) Maintain records of design control device and plan operation and corrective action; compliance test, reference values for monitored parameters, monitoring results and exceedances (alternative control options).

(4) Maintain records according to section 60.246 for equipment leaks.

(5) Records of monitoring and recordings should be maintained for two years.

(6) Records of equipment and process design are kept permanently.

Reporting requirements include:

(1) Submit one-time notifications of:

—Initial compliance certification and election to meet a specific emission limitation;

—Construct a new, brownfield, or padup rebuild by-product coke oven, battery using a new recovery technology;

—Restart a cold-idle battery shutdown prior to November 15, 1990;

—Obtain an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and

—Obtain an alternative standard for coke oven doors on a battery equipped with a shed.

(2) Semiannual compliance certifications.

(3) Report for the venting of coke oven gas other than through a flare system.

(4) Semiannual reports of exceedances of an applicable visible emission limitation for a regulated emission point.

(5) Quarterly reports of excess emissions (for alternative control options)

(6) Performance tests.

(7) Reporting requirements of an owner or operator of any piece of equipment subject to subpart V.

Records and reports are necessary to enable the Administrator to identify new, modified, or reconstructed sources to ensure that the emission limitations, work practice requirements, and other provisions of the national emission standards are being implemented and achieved.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plants maintain help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly. Specifically, the information and data will be used by EPA and states to monitor fugitive benzene emissions, and to ensure effective operation of a vapor-collection system and control device, thus ensuring continuous compliance.

Reporting and recordkeeping requirements on the part of the respondent are mandatory, under sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Industry Burden Statement

In the previously approved ICR, the total annual hours were estimated to be 7,083 and the recordkeeping and reporting burden was estimated to average 196.8 hours per respondent per year. The total annual cost was estimated to average $339,984 based on 36 respondents. Costs were based on an hourly rate of $22.86 plus 110% overhead costs which equals $48.00. There were no capital and start-up cost, or operation and maintenance cost documented since no new sources were estimated to become subject to these standards.

The following activities were considered in calculating the respondent burden: annual maintenance inspection; Method 21 performance evaluations; notifications and written reports required; and information gathering and recording. This analysis presents a highest cost scenario by assuming that all plants are complying with the leak detection and repair program for fugitive emissions, which require more stringent recordkeeping and reporting than the alternative options. This burden estimate considered the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 30, 1999.

Mamie R. Miller,

Acting Director, Manufacturing, Energy and Transportation Division, Office of Compliance.

[FR Doc. 99–17631 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6375–9]

Underground Injection Control Program, Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; ASARCO, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on injection well no migration petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to ASARCO, Inc., (ASARCO) for three Class I injection wells located at Amarillo, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by ASARCO, of the specific restricted hazardous wastes identified in the exemption, into three Class I hazardous waste injection wells (WDW–129, WDW–273 and WDW–324) at the Amarillo, Texas facility, until July 1, 2009, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued April 26, 1999. The public comment period closed on June 10, 1999. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 2, 1999.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Shirley Bruce,

Acting Director, Water Quality Protection Division.

[FR Doc. 99–17632 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00613; FRL–6091–7]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Wednesday, July 21, 1999 from 9:00 a.m. to 5:30 p.m. and Thursday, July 22, 1999 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the: Ramada Plaza Old Town, 901 N. Fairfax Street, Alexandria, VA; telephone number (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Terria Northern, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, (Rm. 1119), Arlington, VA 22202. Office telephone number; (703) 305–7090; Internet address: Fehrenbach.Margie@epamail.epa.gov or Northern.Terria@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC is composed of a balanced group of participants from the following sectors: pesticide industry and user groups; federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; and the public health community. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP, and to provide advice and guidance to the Agency regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to three to five minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

An agenda and background information are being developed and will be posted on the Agency's website, July 16, 1999 at: WWW.EPA.GOV/PESTICIDES. To date, topics planned for discussion at the July 21–22, 1999 meeting will include: Registration priority setting and status of resources; pesticide tolerance issues; the Pesticide Environmental Stewardship Program; worker risk assessments; and updates on several other topics, including FQPA science policies, section 18 Regulations, the Tolerance Fee Rule, and PPDC work group activities.

List of Subjects

Environmental protection.

Dated: July 6, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–17765 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6376–1]

A & D Barrel & Drum Superfund Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United State Environmental Protection Agency (EPA) proposes to enter into a cost recovery settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h). The administrative settlement will resolve the settling party's liability for past response cost incurred by EPA at the A & D Barrel & Drum Superfund Site located in Atlanta, Fulton County, Georgia.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should

such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement is available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: June 25, 1999.

Franklin E. Hill

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 19–17630 Filed 7–9–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, July 14, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, July 14, 1999, which is scheduled to commence at 9:30 a.m. in Room C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	COMMON CARRIER	TITLE: 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171). SUMMARY: The Commission will consider a Report and Order that would simplify reporting requirements for contributors to the numbering administration, local number portability, Telecommunications Relay Services, and universal service support mechanisms.
2	COMMON CARRIER XL	TITLE: Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that commences Phase I of a comprehensive review of its accounting and reporting requirements.
3	WIRELESS TELECOMMUNICATIONS.	TITLE: Amendment of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553); and Implementations of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz 38.6–40.0 GHz Bands (PP Docket No. 93–253). SUMMARY: The Commission will consider a Memorandum Opinion and Order addressing petitions for reconsideration regarding licensing and service rules in the 39 GHz service.
4	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to allocate spectrum on a primary basis for medical telemetry equipment, and to establish rules for a new wireless medical telemetry service.
5	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Closed Captioning Requirements for Digital Television Receivers. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking proposing standards for the reception and display of closed captioning information on digital television (DTV) receivers.
6	OFFICE OF ENGINEERING AND TECHNOLOGY AND COMMON CARRIER.	TITLE: Implementation of Sections 225 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; and Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities (WT Docket No. 96–198). SUMMARY: The Commission will consider a Report and Order concerning access to telecommunications services, telecommunications equipment, and customer premises equipment by persons with disabilities.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection on a delayed basis. The meeting will be aired at approximately 1 pm on July 14, 1999. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100 voice/relay. The meeting will be captioned and will be carried live on the Internet through RealAudio from the FCC website at: http://www.fcc.gov/realaudio. The meeting will be captioned on the Internet at: http://www.lexicast.com. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 voice/relay or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100 voice/relay; fax (703) 834–0111.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 99–17819 Filed 7–8–99; 3:33 pm]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Election Administration Advisory Panel: Renewal of Charter

AGENCY: Federal Election Commission.

ACTION: Notice of Election Administration Advisory Panel Advisory Panel Charter Renewal.

SUMMARY: The Office of Election Administration announces the renewal of the charter for the Election Administration Advisory Panel. The purpose of the Panel is to provide advice and consultation to the Election Administration with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Karen Koyne, Office of Election Administration, 999 E Street, NW, Washington, DC 20463, Telephone: (202) 694–1095; Toll Free (800) 424–9530.

Dated: July 6, 1999.

William Kimberling,

Deputy Director, Office of Election Administration.

[FR Doc. 99–17529 Filed 7–9–99; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1276–DR]

Colorado; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA–1276–DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: June 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident type for this disaster has been expanded to include landslides and mudslides.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–17608 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1279–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1279–DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding, snow and ice, ground saturation, landslides, mudslides, and tornadoes beginning on March 1, 1999 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lesli A Rucker of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

The counties of Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Emmons, Foster, Grand Forks, Griggs, Kidder, LaMoure, Logan, McHenry, McIntosh, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Wells, and the Indian Reservations of the Spirit Lake Tribe, Three Affiliated Tribes, and Turtle Mountain Band of Chippewa for Individual Assistance and Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–17609 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1280–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1280–DR), dated June 9, 1999, and related determinations.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 9, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes, and flooding, on June 4, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act, as authorized by Executive Order 12148, as amended.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter J. Bakersky of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The Pine Ridge Indian Reservation and Shannon County for Individual Assistance and Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–17610 Filed 7–9–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lehigh Acres First National Bancshares, Inc., Lehigh Acres, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Lehigh Acres First National Bank, Lehigh Acres, Florida, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 100 percent of the voting shares of Farmers State Bancshares of Andrew County, Inc., Savannah, Missouri, and thereby indirectly acquire Farmers State Bank of Northern Missouri, Savannah, Missouri.

2. Summersville Bancorporation, Inc., Summersville, Missouri; to become a bank holding company by acquiring at least 87.77 percent of the voting shares of First National Bank, Summersville, Missouri.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquire Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, July 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17525 Filed 7–9–99; 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 26, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager

of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Southwest Partners, Des Moines, Iowa; to engage *de novo* through their subsidiary, Gold Coast Mortgage, San Diego, California, in a joint venture with Werner & Simmons Real Estate, Inc., San Diego, California, and RAS Financial Services, Inc. Pases Verdes, California, in making, acquiring, brokering and servicing loans or other extensions of credit, including residential mortgage loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17526 Filed 7–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 18, 1999.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 18, 1999.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests continued vigorous expansion in economic activity. Nonfarm payroll employment moderated on balance over March and April, and the civilian unemployment rate in April matched its first-quarter average. Total industrial production increased substantially in March and April. Total retail sales edged up in April after recording large gains earlier in the year. Housing starts fell in April. Available indicators suggest that growth of business capital spending has remained relatively rapid. The nominal deficit on U.S. trade in goods and services widened substantially in January and February from its fourth-quarter average. Consumer prices rose substantially in April, boosted by a sharp increase in energy prices; labor costs have remained quiescent thus far this year despite very tight labor markets.

Interest rates on Treasury securities have arisen appreciably since the meeting on March 30, 1999, with the largest increases concentrated in intermediate- and long-term maturities; rates on private obligations show mixed changes over the period. Most key measures of share prices in equity markets have registered sizable gains over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has depreciated somewhat over the period in relation to the currencies of a broad group of important U.S. trading partners.

M2 and M3 recorded sizable increases in April, apparently owing to a tax-related buildup in liquid accounts. For the year through April, M2 is estimated to have increased at a rate somewhat above the Committee's annual range and M3 at a rate slightly above its range. Total domestic nonfinancial debt has continued to expand at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 4-3/4 percent. In view of the evidence currently available, the Committee believes that prospective developments are more likely to warrant an increase than a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, July 6, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–17607 Filed 7–9–99; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 18, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Friday, July 16, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–17820 Filed 7–8–99; 3:41 pm]

BILLING CODE 6210–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed Moderately Revised SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit a proposed moderately revised version of the Standard Form (SF) 278 which it sponsors under its existing executive branch public financial disclosure regulations for review and three-year approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The future revised edition of the

form will replace the editions currently in use.

DATES: Comments on this proposed extension should be received by September 27, 1999.

ADDRESSES: Comments should be sent to William E. Gressman, Senior Associate General Counsel, or Michael J. Lewandowski, Records Management Officer, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov (for E-mail messages, the subject line should include the following reference—''SF 278 paperwork comment'').

FOR FURTHER INFORMATION CONTACT: Mr. Gressman or Mr. Lewandowski at the Office of Government Ethics; telephone: 202–208–8000, extensions 1110 or 1185; TDD: 202–208–8025; FAX: 202–208–8037. A mark-up copy of the SF 278 form as proposed for revision may be obtained, without charge, by contacting either Mr. Gressman or Mr. Lewandowski.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period (with any modifications that may appear warranted), a proposed moderately revised version of the SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for a three-year approval (extension) by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Most of the proposed changes result from OGE's own experience and review for updating, though some come from agency suggestions received from time to time. Moreover, upon consideration, OGE has decided to retain the same basic form design and to keep the Public Financial Disclosure Report as a standard form. As part of that consideration, OGE has reviewed the form and determined that it clearly and plainly, to the extent feasible, explains the reporting requirements of the rather complex financial disclosure provisions of the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, and OGE's implementing executive branchwide regulations at 5 CFR part 2634. The current paperwork approval for the SF 278 is scheduled to expire at the end of September 1999. Since modifications to the standard form are being proposed, OGE will also seek General Services Administration (GSA) clearance for the modified form once OMB paperwork approval for it is received. The original printed forms of the new edition will be stocked through GSA (see below) and will have a yellow or green background shading to help distinguish them from the current edition forms they will replace.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), is the sponsoring agency for the Standard Form 278, the most recent edition of which is that of June 1994. The prior January 1991 edition has also remained usable until supplies are exhausted. The forthcoming new 1999 edition of the SF 278 report form will replace those prior editions. In accordance with section 102 of the Ethics in Government Act, 5 U.S.C. appendix, section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms, together with those of terminees from such positions who may file after leaving the Government, forms the basis for OGE's paperwork estimates in this notice. In light of OGE's experience over the past three years (1996–1998), the estimate of the total number, on average, of such nominees' SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees), is being somewhat reduced to 260. This estimated number is based primarily on the forms processed at OGE by private citizen Presidential nominees to positions subject to Senate confirmation (and their private representatives—lawyers, accountants, brokers and bankers) and those who file termination reports from such positions after their Government service ends, as well as Presidential and Vice Presidential candidates who are private citizens. The OGE estimate covers the next three years, 1999–2001, including a significant increase in reports anticipated with the fall 2000 Presidential election and following transition. The prior paperwork burden estimate was 280 forms per year. The estimated average amount of time to complete the report form, including review of the instructions and gathering of needed information, remains the same at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee and terminee report forms processed at the Office of Government Ethics is being reduced to 780 (from 840) hours. Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1996–1998, that some 21,500 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,050 to 2,100 per year at most.

Among the new modifications proposed to the SF 278 is the incorporation into the form of certain changes in the reporting law as regards higher-category (over $1,000,000) assets, income and liabilities. To date, OGE has asked executive branch departments and agencies in a series of DAEOgrams over the years to so notify filers. Moreover, OGE has now determined, for the first time, that transactions are included in the higher-category reporting requirement; that new inclusion will only affect future reports once the proposed modified form receives its final paperwork approval and is made available by OGE and GSA. As noted in the mark-up copy of the SF 278 as proposed for revision available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), these higher categories for items of filers (including items jointly held with a spouse or dependent children) will be specified in new notes proposed on page 11 of the form instructions as well as on Schedules A, B and C of the report. The new higher categories, and the letter codes representing them that would be indicated, are for assets, transactions and liabilities: $1,000,001 to $5,000,000—A; $5,000,001 to $25,000,000—B; $25,000,001 to $50,000,000—C; and over $50,000,000—D. For income, the new higher

categories and letter codes are: $1,000,001 to $5,000,000—a; and over $5,000,000—b. For any such items solely held by a spouse or dependent children, only the traditional ''over $1,000,000'' column would need to be checked. In addition, OGE proposes to include on page 5 of the form instructions a notice of a similar modification as to reportable trust interests for those filers who have qualified blind trusts. In such instances, OGE advises concerned filers and their agencies of the application of this provision, which does not apply to trusts executed prior to July 24, 1995, that preclude the beneficiary from receiving information on the total cash value of any such trust interest. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, which amended section 102(a)(1)(B), (d)(1) and (e)(1) and added new section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1).

Moreover, OGE is proposing to include an adjustment of the gifts/travel reimbursements reporting thresholds for the SF 278 that needs to be made since GSA recently raised ''minimal value'' to $260 or less for the three-year period 1999–2001 (from the prior level of $245 or less) under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. See 64 FR 13700–13701 (March 22, 1999), revising the GSA foreign gifts regulation at 41 CFR 101–49.001–5. Because the foreign gifts ''minimal value'' is now over $250, the Ethics Act financial disclosure gifts/reimbursements reporting thresholds, at 5 U.S.C. appendix, section 102(a)(2)(A) and (B), which are pegged to any such increase are being adjusted to ''more than $260'' for the aggregation level of reporting and ''$104 or less'' for gifts and reimbursements which do not have to be counted in the aggregate threshold. In a forthcoming rulemaking, OGE will revise those reporting thresholds as found at 5 CFR 2634.304(a), (b) and (d). Since OGE expects that GSA will adjust ''minimal value'' every three years, the ethics reporting thresholds for gifts and reimbursements will now likely have to be adjusted every three years as well (as coordinated with paperwork renewals, as nearly as possible).

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE proposes in the future to adjust the referenced civil monetary penalty, on page 11 of the instructions, for prohibited uses of an SF 278 report to which access has been gained. The penalty under section 104(a) of the Ethics Act, 5 U.S.C. appendix, section 104(a), will be raised from $10,000 to $11,000 once OGE and the Department of Justice issue their respective inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act, at 28 U.S.C. 2461 note. The OGE rulemaking will, in pertinent part, revise 5 CFR 2634.703 of the executive branchwide financial disclosure regulation. The Office of Government Ethics will request permission from OMB to revise the SF 278 reference once the inflation adjustment takes effect without further paperwork clearance, even if that adjustment occurs after the paperwork reclearance of the moderately revised form (with notice and distribution to the agencies and OMB at that time). In addition, any periodic future adjustments to that civil monetary penalty pursuant to further rulemakings by OGE and the Justice Department (every three years or so) under the inflation adjustment law will also be reflected in future editions of the SF 278.

Also on page 11 of the instructions, OGE would parenthetically reference the extra time grantable pursuant to a filing extension—up to 45 days by the filer's agency and up to an additional 45 days by OGE. See 5 U.S.C. appendix, section 101(g)(1) of the Ethics Act and 5 C.F.R. 2634.201(f) of OGE's regulations thereunder. In addition, OGE is adding a new check-off box in the reviewing officials comments box on the bottom of the front page of the SF 278 report form itself to show whether any filing extension has been granted and, if so, the number of days.

Another important change OGE is proposing is the addition of a new continuation page for part I of Schedule B on transactions. In OGE's experience, many filers need more than the five spaces currently provided in that part to indicate their reportable purchases, sales and transactions. The new continuation page would add sixteen more spaces for such entries, and duplicates of that page would allow for any further entries needed.

Various other, minor changes are being proposed. The Office of Government Ethics would include in the Schedule A (assets and income), Block C column for indicating the type of ''other'' income a new cross-reference to the additional column calling for the actual amount of any such income. In Block A of Schedule A, OGE would add reference to the requirement for reporting the source, but not the amount, of any earned income of a spouse over $1,000 (over $200 for honoraria). Further, OGE proposes to add a clarification that no earned income of dependent children need be reported. Also in Block A, OGE would include a new reminder that any reportable income received from assets prior to sale or exchange should be shown. The Office of Government Ethics proposes to provide a corresponding cross-reference reminder in Part I of Schedule B (transactions), together with a note that any remaining asset value also needs to be shown on Schedule A (none or less than $1,001 if a total sale or exchange). New Sentences in Part II of Schedule C (agreements or arrangements) and Part I of Schedule D (outside positions) would remind incumbent filers that the reporting period for those items is the preceding calendar year *and* the filing year up to the date of filing. In addition, OGE proposes to add a further reminder to Part II of Schedule C to the effect that any reportable financial arrangement also needs to be shown on Schedule A. Moreover, a new indication would be added on page 5 of the instructions of the general requirement to show on the form any reportable interests in a trust as to which the filer serves as trustee.

Another revision that OGE proposes would add express mention, in the public burden information notice on page 11 of the instructions, of a statement pursuant to the 1995 amendments to the paperwork law to the effect that ''an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number,'' together with a parenthetical mention that such number is displayed in the upper right-hand corner of the front page of the form. In that notice, OGE also proposes to drop the reference to OMB as a further point of contact for information collection comments on the SF 278. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for such comments on the form, on which OGE will coordinate with OMB if necessary. Furthermore, OGE proposes to slightly modify the wording regarding the sixth numbered routine use under the Privacy Act statement (also on page 11 of the instructions). The modified wording will reflect the application to *pending* judicial or administrative proceedings of the underlying routine use h. in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990).

Finally, various minor proposed style, format and updating changes to certain parts of the instructions and the report form are proposed, including indication of the new 1999 edition date.

Once finally cleared by OMB and GSA and printed by the Government Printing Office, the paper original of the new 1999 edition of the SF 278 report form will be stocked and available for purchase by departments and agencies nationwide from the GSA Federal Supply Service Customer Service Centers.

In addition, OGE already has placed on its Internet Web site (Uniform Resource Locator (URL) address: *http://www.usoge.gov)* a viewable and downloadable Portable Document Format (PDF) version of the current 6/94 edition of the SF 278 and is also working on a fillable version of the 6/94 edition. A fillable version of the SF 278 is available from GSA's Web site electronic library of standard and optional forms (URL address: *http://www.gsa.gov/forms/).* Moreover, OGE will develop both PDF and fillable versions of the new 1999 edition of the SF 278 once it is finally cleared and issued later this year. Those electronic versions of the SF 278 form have been and will continue to be made available free-of-charge to executive branch departments and agencies and their employees. In addition, the forthcoming 1999 edition of the form will be included in future editions of The Ethics CD–ROM. Departments and agencies can also electronically duplicate the SF 278 without standard form exception clearance, provided that the duplication precisely parallels the original paper form to the extent technically feasible, producing a ''mirror image'' print-out thereof.

Furthermore, OGE is considering the paperwork and technical issues relating to development of so-called ''smart'' electronic forms, including the SF 278, which employ a question and answer format to elicit information on reportable interests and funnel the responses onto the various schedules of the report forms. Various agencies including OGE are interested in this area, and OGE is reviewing the executive branchwide aspects of these initiatives.

For now, OGE notes that even with all of these electronic initiatives, the SF 278 reports, once completed by individual filers, will still need to be printed out and signed manually. Electronic filing is not authorized at the present time for SF 278 reports. However, OGE is monitoring developments under the Government Paperwork Elimination Act and the draft OMB guidelines, under which appropriate electronic availability and filing of various Government forms will generally be phased in by 2003.

Public comment is invited on each aspect of the proposed moderately revised SF 278 Public Financial Disclosure Report as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Any comments received in response to this notice will be summarized for, and may be included with, OGE's request for extension of OMB paperwork approval for this information collection. Comments will also become a matter of public record.

Approved: July 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–17528 Filed 7–9–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Fiscal Year 1999 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging (AoA), HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act (Act), title VI, Grants for Native Americans, part B—Native Hawaiian Program.

SUMMARY: The AoA will accept applications for funding in fiscal year 1999 under the Act, title VI, Grants for Native Americans, part B—Native Hawaiian Program. The deadline date for the submission of applications is September 10, 1999. Public and/or nonprofit private organizations having the capacity to provide services for Native Hawaiians are eligible for assistance under title VI, part B, if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services. For the purposes of title VI, part B, the term ''Native Hawaiian'' means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, 330 Independence Avenue, S.W., Room 4743, Washington, DC 20201, telephone: (202) 619–2713.

Dated: July 7, 1999.

Diane Justice,

Deputy Assistant Secretary for Aging.

[FR Doc. 99–17653 Filed 7–9–99; 8:45 am]

BILLING CODE 4130–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–99–2]

Fiscal Year 1999 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to establish, or expand and improve, Statewide Senior Legal Hotlines whose purpose is to advance the quality and accessibility of the legal assistance provided to older people.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for four (4) to five (5) projects that establish, or expand and improve, Statewide Senior Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is August 26, 1999. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions experienced in providing legal assistance to older persons.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, S.W., Room 4264, Washington, DC 20201, or by calling 202/619–2987.

Dated: July 7, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–17654 Filed 7–9–99; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00011]

Emerging Infections Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to support the national network of Emerging Infections Programs (EIP). This program will assist in local, State, and national efforts to conduct surveillance and applied epidemiologic and laboratory research in emerging infectious diseases and to pilot and evaluate prevention measures. This program addresses the ''Healthy People 2000'' priority area of Immunization and Infectious Diseases.

The purpose of the program is to assist State health departments to support established EIPs (California, Connecticut, Georgia, Maryland, Minnesota, New York, Oregon, and Tennessee) or to develop new EIPs as part of the national network. EIPs will be population-based centers designed to assess the public health impact of emerging infections and to evaluate methods for their prevention and control. The EIP network has developed these guiding principles:

1. The EIP network aims to be a national resource for surveillance, prevention, and control of emerging infectious diseases. EIP activities are intended to go beyond the routine functions of health departments in ways that allow important public health questions to be answered.

2. EIP activities address important issues in infectious diseases and are selected with regard to what is appropriate, in particular, for the EIP network.

3. The EIP network maintains sufficient flexibility for emergency response and to address new problems as they arise.

4. Training is a key function of the EIPs.

5. The EIP network develops and evaluates public health practices and transfers what is learned to the public health community.

6. The EIP network gives high priority to activities that lead directly to prevention of disease.

Activities of the EIPs fall into the general categories of: (1) Active surveillance; (2) applied epidemiologic and applied laboratory research; and (3) implementation and evaluation of pilot prevention/intervention projects.

The EIPs will maintain sufficient flexibility to accommodate changes in projects as required by the emergence of public health infectious disease problems. EIPs will be strategically located to serve a variety of geographical areas and diverse groups of people. They may enlist the participation of local health departments, academic institutions, and other public and private organizations with an interest in addressing public health issues relating to emerging infectious diseases, and will seek support from sources, in addition to CDC, to operate the EIP. EIPs will work as part of a collaborative network.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of city governments with jurisdictional populations greater than 2,500,000 (based on 1990 census data) or county governments with jurisdictional populations greater than 8,000,000 (based on 1990 census data) are eligible to apply. Specifically, the three eligible local jurisdictions are New York City; Los Angeles County, California; and Chicago.

C. Availability of Funds

Approximately $9,000,000 is available in FY 2000 to fund up to eight awards. Although only eight awards are expected at this time, CDC may make additional awards to approved applications received and evaluated under this announcement. It is expected that the awards will range from approximately $500,000 (for a new award) to approximately $1,200,000 (for a competing continuation) depending on the activities funded per site. This amount is for both direct and indirect costs. It is expected that the awards will begin on or about December 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and the availability of funds.

Note: Per instructions in Evaluation Criteria section below, the application should include proposals for the core activities and at least one optional project. CDC will fund core and optional projects based on the application and availability of resources.

Funding Preferences

To achieve appropriate geographic representation in the EIP network, funding preference may be given to approved applications that would enhance the geographic diversity of the network.

Funding preference may be given to competing continuation applications over applications for programs not already receiving support under the EIP cooperative agreement.

D. Program Requirements

Recipient Activities

1. Establish and operate an EIP to further local, State, and national efforts to address emerging infectious diseases:

a. Establish the EIP in a defined population, which could include either an entire State or a geographically defined area (or areas) within a State. To accomplish the objectives of certain EIP activities, a minimum population base of approximately 1,500,000 may be necessary.

b. Organize the EIP so that it will have the capacity to conduct multiple concurrent projects.

c. Organize the EIP so that it will maintain the ability to accommodate changes in specific activities and priorities as the public health system's need for information changes or new health problems emerge.

d. Operate the EIP so that it can function effectively as part of a national network of EIPs. Collaborate with CDC and other EIP sites, through the EIP steering group and other EIP working groups, to establish priorities, to coordinate and monitor projects, and to assure that important emerging infections issues are well addressed.

2. Work to obtain technical and financial assistance to complement the basic assistance obtained from CDC.

3. Develop the EIP as a partnership between the health department and other public and private organizations that have an interest in addressing public health issues relating to emerging infectious diseases (e.g., local public health agencies, schools of public health, university medical schools, health care providers, infection control practitioners, clinical laboratories, community-based organizations, other Federal and State government agencies, research organizations, medical institutions, foundations, etc.).

4. Conduct emerging infections activities in collaboration with appropriate partner organizations.

Collaborate with other EIPs, as appropriate, to develop and conduct EIP activities.

a. Categories of EIP activities. Activities of the EIPs fall into three categories:

(1) Active population-based surveillance projects. These may include collection and submission of disease-causing infectious agents to State, CDC, or other laboratories. For example, the surveillance case definition for the condition might involve detection of a positive culture or a drug resistant isolate in a microbiology laboratory, a serologic test result, a histopathologic finding, or a clinical syndrome, depending upon the disease or condition under surveillance; the specific approach to surveillance could also vary depending on the disease or condition under surveillance. Surveillance should be comprehensive (e.g., may include audits to assure complete reporting) with active case-finding.

(2) Applied epidemiologic and applied laboratory projects. Examples of potential projects include: evaluation of illnesses often not specifically diagnosed for which information about trends and etiology are important (e.g., diarrhea, encephalitis); evaluation of clinical outcomes or risk factors for drug resistant infections; and evaluation of the efficacy of upcoming pneumococcal and meningococcal conjugate vaccines.

(3) Implementation and evaluation of pilot prevention/intervention projects for emerging infectious diseases. Examples might include assessment of efforts to promote safe food preparation in the home, evaluation of impact of hand-washing promotion on infectious diseases in child-care facilities, or evaluation of antibiotic prescribing practices in out-patient settings.

b. Specific EIP activities.

In the application, propose the core activities and at least one optional activity. (Note: Approximately 80–90% of resources will go for core and multisite activities.) See Appendix for details about activities. Applicants are encouraged to consult with CDC programs in planning their proposed activities. Core Activities (propose all):

(1) Active Bacterial Core surveillance (ABCs) and related activities.

(2) Active population-based laboratory surveillance for foodborne diseases and related activities (FoodNet).

(3) Unexplained Deaths and Critical Illnesses Project, OR Active surveillance for syndromes of possibly infectious etiology (e.g., encephalitis, fulminant hepatitis).

Optional (applicant may propose activities from the list below or other projects of local interest or concern that are in keeping with the guiding principles of the EIP network):

(1) Sentinel Surveillance for chronic liver disease.

(2) Sentinel Counties Study for Acute Viral Hepatitis.

(3) Population-based laboratory surveillance for invasive disease caused by community acquired methicillin-resistant Staphylococcus aureus.

(4) Surveillance of antimicrobial-resistant isolates from clinical microbiology laboratories by aggregating cumulative susceptibility data, i.e., antibiograms and correlation with antimicrobial usage practices.

(5) Facilitating electronic reporting from clinical laboratories to public health (Electronic Laboratory-based Reporting, ELR).

(6) Enhanced case ascertainment for culture negative meningococcal disease.

(7) Active laboratory-based surveillance for Bordetella pertussis.

5. As a part of certain EIP projects, provide specimens such as disease-causing isolates or serum specimens to appropriate organizations (which may include, but is not limited to, CDC) for laboratory evaluation (e.g., molecular epidemiologic studies, evaluation of diagnostic tools).

6. Manage, analyze, and interpret data from EIP projects, and publish and disseminate important public health information stemming from EIP projects in collaboration with CDC and the EIP network.

7. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

8. Incorporate training activities as an important component of the EIP. Training activities may take one or more of these forms:

(1) Providing training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students.

(2) Providing training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel.

(3) Acting as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

9. If a proposed project involves research on human participants, ensure appropriate IRB review.

CDC Activities

1. Provide general coordination for the EIP network.

2. Provide consultation, scientific and technical assistance in the operation of the EIP and in designing and conducting individual EIP projects.

3. Participate in analysis and interpretation of data from EIP projects. Participate in the dissemination of findings and information stemming from EIP projects.

4. Assist in monitoring and evaluating scientific and operational accomplishments of the EIP and progress in achieving the purpose and overall goals of this program.

5. If needed, perform laboratory evaluation of specimens or isolates (e.g., molecular epidemiologic studies, evaluation of diagnostic tools) obtained in EIP projects and integrate results with other data from EIP projects.

6. If during the project period research involving human subjects should be conducted and CDC scientists will be co-investigators in that research, assist in the development of a research protocol for IRB review by all institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on, at least, an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application. Applications will be evaluated on the criteria listed, so it is important to follow them in preparing your program plan.

Applications should address the following topics in the order presented:

1. Understanding the objectives of the EIP
2. Description of the population base for the EIP
3. Description of existing capacity to assess, control, and prevent emerging infectious diseases
4. Operational plan
5. Evaluation plan
6. Budget

Applicants should propose the core activities and at least one optional activity. Optional activities may be chosen from the list provided or initiated by the applicant based on local interest, concern, or expertise that are in keeping with the guiding principles of the EIP. Each activity proposal, including both core and optional activities, should be clearly identified in a distinct portion of the Operational Plan and should not exceed 3 pages. Although the activities described below

address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

Page Limitations

The application narrative (excluding budget, budget narrative, appendices, and required forms) must not exceed 25 single-spaced pages, printed on one side, with one inch margins, and a font size no smaller than 10. The following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitaes, and budget. In addition, documentation of relevant accomplishments, such as abstracts, manuscripts, or bibliographies may be included in appendices. Materials or information that should be included in the narrative will not be reviewed if placed in the appendices.

Budget Instructions

For each line-item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. All other line-items should also be clearly justified. In addition to the budget justification, provide an estimate of the budget for each separate activity or project (e.g., FoodNet, ABCs, etc.).

Bona Fide Agent Status

If applicant is an agent of a State public health agency and not a State public health agency itself, documentation that applicant is acting as a bona fide agent of a State public health agency should be provided in an appendix. Applicants acting as bona fide agents of a State public health agency are strongly encouraged to consult with CDC's Grants Management Specialist (identified in Section J below) prior to submitting the application for guidance regarding what constitutes acceptable documentation.

F. Submission and Deadline

Notice of Intent To Apply

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at least thirty (30) days prior to the application due date. Notification should include: (1) Name and address of institution, and (2) name, address, and telephone number of contact person. Notification should be provided by facsimile, postal mail, or E-mail, to: Catherine Spruill, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333, E-mail address cas5@cdc.gov. Facsimile (404) 639–4197.

Application Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are provided in the application kit. On or before September 1, 1999, submit the application to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Your application should address each section in the order presented below:

1. Understanding the objectives of the EIP (5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the EIP.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the EIP network.

2. Description of the population base of the EIP area (10 points).

a. Clear definition of the geographic area and population base in which the EIP will operate. Detailed description of the demographics of the proposed population base.

b. Clear description of various special populations within the defined population base as they relate to the proposed activities of the EIP, such as the rural or inner-city poor, underserved women and children, the homeless, immigrants and refugees, and persons infected with HIV.

c. Extent to which the population base is demographically diverse.

3. Description of existing capacity to assess, control and prevent emerging infectious diseases (40 points).

a. Description of applicant's past experience and documentation of accomplishments in conducting active surveillance, applied epidemiologic research, applied laboratory research, and prevention research, in general, and on emerging infectious diseases, including antimicrobial drug resistant, foodborne and waterborne, currently or potentially vaccine preventable, and opportunistic diseases. (A list of relevant papers and abstracts should be included in an appendix.) Demonstration of applicant's ability to develop and maintain strong cooperative relationships with both public and private, local and regional, medical, public health, laboratory, academic, and community organizations. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

c. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., included in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to participate in the EIP and define their roles. Do not include letters of support from CDC personnel.

d. Demonstration of applicant's ability to participate in a multistate collaborative network.

4. Operational plan (40 points).

a. The extent to which the applicant's plan for establishing and operating the population-based EIP clearly describes the proposed organizational and operating structure/procedures and clearly identifies the roles and responsibilities of all participating agencies, organizations, institutions, and individuals.

b. The extent to which the applicant describes plans for collaboration with CDC and other EIP sites in the

establishment and operation of the EIP and individual EIP projects, including project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed EIP and for conducting individual EIP projects.

d. Description and quality of plans to provide training opportunities in one or more of these areas: (1) Providing training opportunities for persons in professional training, such as infectious disease fellows, laboratory fellows, public health students; (2) Providing training for partner organizations within the EIP area, such as infection control practitioners or local health department personnel; (3) Acting as a resource for states that are not participating in the EIP network, for example by providing information, training, or recommendations about emerging public health issues and evolving public health practices.

e. Description of a plan to solicit and secure financial and technical assistance from other public and private organizations (e.g., schools of public health, university medical schools, public health laboratories, community-based organizations, other Federal and State government agencies, research organizations, foundations, etc.) to supplement the core funding from CDC.

f. Quality of the proposed projects (as requested in the Application Content section above) regarding consistency with EIP guiding principles, public health needs, intent of this program, feasibility, methodology/approach, and collaboration/ participation of partner organizations.

g. Identification of applicant's key professional personnel to be assigned to the EIP and EIP projects as well as key professional personnel from other participating or collaborating institutions, agencies, and organizations outside of the applicant's agency that will be assigned to EIP activities (provide curriculum vitae for each in an appendix). Clear identification of participants' respective roles in the management and operation of the EIP. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the EIP.

i. The extent to which the applicant clearly describes how the EIP or its design for the EIP is flexible and able to swiftly address new public health challenges in infectious diseases.

j. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation (5 points).

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the EIP and of individual EIP projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

6. Budget (not scored).

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program. Extent to which applicant shows both Federal and non-Federal (e.g., State funding) shares of total cost for the EIP.

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

8. Human Subjects (not scored).

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports. The first semiannual report is required with each year's continuation application and should cover program activities from beginning of the current budget period to date of report/application preparation. The second semiannual report is due 90 days after the end of each budget period and should cover activities for the entire budget period recently completed.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final FSR and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 317(k)(1) and 317(k)(2) of the Public Health Service Act [42 U.S.C. sections 241(a), 247b(k)(1) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00011, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2751. E-mail address: ayw3@cdc.gov.

For program technical assistance, contact: Catherine Spruill, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333,

Telephone (404) 639–2603. E-mail address: cas5@cdc.gov.

See also the CDC homepage on the Internet for a copy of this announcement, application and forms: http://www.cdc.gov.

Potential applicants may obtain a copy of ''Preventing Emerging Infectious Diseases: A Strategy for the 21st Century'' through the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Office of Planning and Health Communication—EP, Mailstop C–14, 1600 Clifton Road, NE., Atlanta, GA 30333 or on the CDC webpage.

Dated: July 6, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–17556 Filed 7–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[99–01]

New Child Welfare Demonstration Project Proposals Submitted by States for Waivers Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for child welfare waiver demonstration projects submitted to the Department of Health and Human Services pursuant to the guidance contained in Information Memorandum ACYF–CB–IM–99–03 dated January 21, 1999, public notice of which was given in the **Federal Register** of February 8, 1999, Vol. 64, No. 25, page 6099.

Comments: We will accept written comments on these proposals, but will not provide written responses to comments. We will neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project or requests for copies of a proposal, contact the State contact person listed for that project.

Comments on a proposal should be addressed to:

Laura Oliven, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Mary E. Switzer Building, Room 2058, Washington, D.C. 20447. FAX: (202) 260–9345.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1130 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve child welfare waiver demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. The most recent expression of these policies and procedures may be found in the January 21 Information Memorandum cited above, a copy of which may be found at the ACF website at http://www.acf.dhhs.gov/programs/cb/cww.htm or may be obtained from the National Clearinghouse on Child Abuse and Neglect Information, (800) 394–3366, internet address <nccanch@calib.com>. We are committed to a thorough and expeditious review of state proposals to conduct child welfare demonstrations.

II. Listing of New Proposals

As part of our procedures, we are publishing a notice in the **Federal Register** of all new proposals. This notice contains summaries of five new proposals received as of July 6, 1999. Each of the proposals contains an assurance that the proposed demonstration effort will be cost neutral to the federal government over the life of the proposed effort; and each proposal contains an evaluation component designed to assess the effectiveness of the project.

State: Colorado

Description: Colorado proposes to test the impact of contracting with a single provider (or consortium of providers) under a case rate financing model to achieve improved outcomes for children in the target population. Under the case rate, the providers will have a defined amount of resources to achieve case outcomes. Each of the six counties participating in the project will individually negotiate their case rate. One of the most critical aspects of the case rate structure is that providers will be expected to meet child specific outcomes and system performance targets. In addition to the case rate financing structure, the provider will be able to use flexible title IV-E funds to provide an expansive array of preventive and treatment intervention services. To be eligible for the demonstration, the provider must have access to such services as mental health, substance abuse, transportation, education, post placement services and many more. Because few providers have the full array of services ''under one roof'' they will need to collaborate to ensure a comprehensive network. The State seeks waivers of child welfare eligibility requirements and restrictions on allowable expenditures for their proposed five year demonstration.

The target population for the project would be children who are at high risk of, or already experiencing ''placement drift'' and are at significant risk of aging out of the system without a permanent relationship with a family. The State hypothesizes that by converting the financing from fee-for-service to risk-based, performance based contracting, the State will produce improved safety, permanency and well-being outcomes for this population and overall efficiencies in the system. The State will analyze the impact of the project using a random assignment evaluation design.

Contact Person: Marva Livingston Hammons, Director, Colorado Department of Human Services, 1575 Sherman Street, 8th Floor, Denver, Colorado 80203–1714, Phone: (303) 866–5700, Fax: (303) 866–4214.

State: Florida

Description: Florida proposes to test the effectiveness of capitating payments and providing flexible use of title IV–E dollars to support and incentivize locally controlled systems of care in select districts to better meet the needs of abused and neglected children and their families. This demonstration will assist the State in meeting its 1998 legislative requirement to develop a plan for privatizing the entire child welfare system, with the exception of child protective service intake and investigations, by the year 2003. Florida plans to conduct this demonstration in at least 8 of its 15 districts. The target population will be all title IV–E and non-title IV–E eligible children and families in each of the demonstration sites who are reported for abuse or neglect with some finding of maltreatment and require services beyond those provided by the department during the investigation phase. Each demonstration site will contract with community-based, nonprofit agencies for the management and delivery of services, using a lead agency community network model. These lead agencies will assume the financial risk for providing all services for all children referred and receive

financial bonuses and penalties linked to performance. In addition, these flexible child welfare services will be coordinated with Medicaid funded behavioral health services.

The State hypothesizes that providing expanded services through community-based systems of care will improve access to services, provide protection from harm for the children served, reduce the length of stay in out-of-home care, reduce re-entry into the foster care system, improve satisfaction ratings of services, and reduce variability in performance across sites.

The State is requesting a waiver of eligibility requirements and services that can be provided using federal title IV–E funds. The evaluation of this five year demonstration will be based on county comparisons.

Contact Person: Margaret Taylor, Florida Department of Children and Families, 1317 Winewood Boulevard, Tallahassee, Florida 32399–0700, Phone: (850) 922–0149, Email: Margaret__Taylor@dcf.state.fl.us

State: Illinois

Description: The State of Illinois proposes to provide enhanced alcohol and other drug abuse (AODA) and individualized services to families affected by alcohol and other drugs. The purpose of the demonstration is to improve permanency outcomes for children of parents with AODA problems and to reduce the negative impact of parental AODA on children by assisting the family in treatment and recovery. Specifically the project is expected to result in higher rates of reunification, a reduced number of days in foster care and fewer re-allegations of abuse or neglect.

This project will involve two cohorts. Families in the first cohort will be assigned Recovery Coaches who will conduct outreach and support services. Following an additional planning year, families assigned to the second cohort will receive services tailored to their individual needs, in addition to the outreach and support provided by the Recovery Coaches. These services may include medically-managed detoxification and withdrawal, drug-free housing for families, graduated sanctions, reunification/concurrent planning specialists, public health nurses and parental involvement services. Existing aftercare services are available for control group families; Recovery Coaches will access and coordinate aftercare services for experimental group families.

The State hypothesizes that children in the experimental groups will spend fewer average days in foster care, will be safely reunited with their parents at higher rates, and revictimized at lower rates than children in the control group. The state also postulates that parents in the demonstration groups will successfully complete AODA treatment at a higher proportion than do parents in the control group.

Target populations in Cook County are: (1) custodial parents with a child who enters placement after September 30, 1999; and (2) parents who deliver substance exposed infants. The demonstration will operate for five years. The State will randomly assign families to experimental and control groups following AODA assessment.

The State is requesting a waiver to allow title IV–E funds to be used for services not normally eligible including the maintenance and provision of services to the parent of the ward as well as to operate this demonstration project in selected parts of the state.

Contact Person: Jess McDonald, Director, Illinois Department of Children and Family Services, 100 West Randolph, 6th Floor, Chicago, IL 60601, Phone: (312) 814–4650, Fax: (312) 814–3255.

State: Maryland

Description: The State of Maryland proposes two distinct components for a five year Child Welfare demonstration: intensive substance abuse treatment and supportive services for substance-abusing women; and a child welfare managed care project for children placed in out-of-home care through the Baltimore City Department of Social Services.

The first project would provide gender specific substance abuse treatment in combination with intensive supports and case management from a Family Support Services Team (FSST) to substance abusing mothers whose children are in foster care, or at risk for being placed in foster care. The FSST will consist of Chemical Addiction Counselors (CAC), mentors, parent aides, agency staff and treatment providers. The program is designed to provide a comprehensive and seamless support system to incentivize women to enter into, and complete successful drug and alcohol treatment. The purpose of the project is to prevent unnecessary out-of-home placements and reduce the length of stay of children already placed in foster care. The project would be conducted in Baltimore City and Prince George's County, two jurisdictions in Maryland that experience a high number of foster care placements due to parental substance abuse.

The second project would implement a child welfare managed care pilot initiative for 1,000 of the children in paid out-of-home placement and committed to the Baltimore City Department of Social Services (BCDSS) by the Baltimore City Juvenile Court. This initiative focuses on accountability and quality outcomes with reimbursement linked to performance. The project proposes to reshape the contractual relationship between the public agency and the private agencies from one of ''payment of care'' to a ''reward for results'' system. Providers will be asked to propose outcome improvements that exceed the State outcome goals and current benchmarks. Providers that do not meet the benchmark outcomes will risk financial loss. Those who improve on outcomes will be given the flexibility to redirect cost savings to innovative and enhanced services for project participants. The State expects to produce an increase in permanency with a reduction in the number of foster care days; a decrease in the restrictiveness of placements provided; and a reduction in re-entry into foster care.

Contact Person: Linda D. Ellard, Executive Director, Social Services Administration, 311 West Saratoga Street, Baltimore, MD 21201, Phone: (410) 767–7216, Fax: (410) 333–0127.

State: West Virginia

Description: West Virginia proposes a substance abuse initiative that would allow a child to remain in his/her home or be placed in a temporary setting while the child's mother receives 30–60 day in-patient and/or residential treatment for alcohol or drug abuse. Where possible, the child would be placed in close proximity to the treatment center to enable visitation between the mother and child. The State hypothesizes that by placing the child in a temporary care setting, and avoiding the ''formal'' foster care system, mothers receiving treatment will be more likely to enter into, and complete, successful treatment. The State expects to reduce the number of children entering into the State's formal foster care system due to parental substance abuse; increase the number of family reunifications after treatment; and increase the number of mothers completing short-term treatment. The State intends to partner with the West Virginia Department of Health and Human Resources, responsible for the care of the state's foster children, with the Division of Alcoholism and Drug Abuse, to assist mothers in overcoming barriers to substance abuse treatment. Following treatment, multidisciplinary teams including Substance Abuse Outreach Specialists and social workers

will continue to provide services to the families to ensure the children's safety and work towards successful reunification.

The State plans to operate this demonstration project in rural counties including Boone, Cabell, Clay, Jackson, Roane, Kanawha, Lincoln, Mason, Mingo, Putnam, and Wayne. The target population includes all youth ages 0–18 who would likely enter formal foster care if their parents do not receive substance abuse treatment, according to formal risk assessments.

The State is requesting a waiver of the placement standards and eligibility requirements. West Virginia plans to assess the impact of the five year demonstration using a random assignment evaluation design.

Contact Person: Ann Burds, Director, Bureau for Children & Families/Office of Social Services, Department of Health and Human Resources, State Capital Complex, Building 6, room 850, Charleston, West Virginia 25305, Phone: (304) 558–7980, Fax: (304) 558–8800.

Dated: July 7, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–17655 Filed 7–9–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the publication of modifications to the list of standards that will be recognized for use in the premarket review process. This will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: This recognition of standards is effective on July 12, 1999; however, written comments concerning this document may be submitted at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of ''Modifications to the List of Recognized Standards'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Written comments concerning this document must be submitted to the listed contact person. Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed via the Internet at FDA's web site ''http://www.fda.gov/cdrh/fedregin.html''. See the **SUPPLEMENTARY INFORMATION** section for electronic access to ''Guidance on the Recognition and Use of Consensus Standards,'' the current list of ''FDA Recognized Consensus Standards Appendix A,'' and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: James J. McCue, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 101.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d) to allow the agency to recognize consensus standards established by international and national standards development organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance document entitled ''Recognition and Use of Consensus Standards,'' which describes how FDA will implement that part of FDAMA. The February 1998 notice also provided the initial list of recognized standards.

In a notice published in the **Federal Register** of October 16, 1998 (63 FR 55617), FDA made modifications to the initial list of recognized standards. This October 1998 notice described the changes made in the initial list and also provided a listing of the ''Modifications to the List of Recognized Standards.''

II. Discussion of Modifications to the List of Recognized Standards

Modifications to the list of consensus standards to be recognized for use in premarket review and to meet other requirements are presented in a listing at the end of this notice.

Modifications identified in the listing include: (1) The initial addition of certain recognized standards not previously identified by FDA; (2) the addition of certain recognized standards in conjunction with the withdrawal of other previously recognized standards and their replacement by later, amended, or different standards; and (3) the addition of certain recognized standards with revisions to the supplementary information sheets for the standards, involving changes in significant applications of the standards, e.g., changes in the extent of recognition.

The listing of modifications presented at the end of this document does not include minor revisions which the agency is making in certain previously recognized standards. These revisions are made for editorial, corrective, or technical purposes, such as adding a previously omitted date, or changing the contact person(s) in the supplementary information sheet for a recognized standard. Particular minor revisions in the specific recognition of standards are described in the following paragraphs.

As noted previously, FDA is making modifications to the list of recognized standards that represent the initial addition of certain standards not previously recognized by the agency. These additions are identified in the listing presented at the end of this document and are not otherwise described.

Modifications that FDA is making, which represent the addition of certain recognized standards in conjunction with the withdrawal of other standards, or with changes in significant applications of the standards, are also identified in the listing at the end of this document. However, the agency is further describing the actions it is taking in making these additions, and in sections II.A through H of this document it is identifying the minor revisions it is making in certain recognized standards.

A. Generally Applicable Standards

1. ANSI/AAMI/ISO 10993–1 and ISO 10993–1 are withdrawn, under previous items 1 and 3,[1] respectively, from the list of recognized consensus standards. The latest version of the standard ISO 10993–1 (1997) is added, under current

[1] Item numbers identify entries in the ''FDA Recognized Consensus Standards Appendix A.'' Within each grouping, entries begin with item 1. Item numbers are not repeated if an entry is withdrawn, replaced, or added.

item 13, to the list of recognized standards.

2. EN 1441 (1997) is withdrawn, under previous item 9, from the list of recognized consensus standards. EN 1441 (1997) is added back, under current item 21, to the list of recognized standards, with changes to the extent of recognition and relevant guidances made in the supplementary information sheet(s) for the recognized standard.

B. Anesthesia

1. IEC 60601–2–13 (1998–05) is withdrawn, under previous item 10, from the list of recognized consensus standards. This 1998 version of the standard is not yet finalized. The latest version of the standard IEC 60601–2–13 (1989) is added, under current item 30, to the list of recognized standards.

C. Biocompatibility

1. ANSI/AAMI/ISO 10993–12 (1996) is withdrawn, under previous item 22, from the list of recognized consensus standards. ANSI/AAMI/ISO 10993–12 (1996) is added back, under current item 28, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

2. ANSI/AAMI/ISO 10993–5 (1993) is withdrawn, under previous item 17, from the list of recognized consensus standards. ANSI/AAMI/ISO 10993–5 (1998) is added, under current item 29, to the list of recognized standards.

3. ASTM F720–81 (r1996) is withdrawn, under previous item 8, from the list of recognized consensus standards. ASTM F720–81 (r1996) is added, under current item 30, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

4. USP 23, ''Biological Reactivity Tests, In Vivo, Classification of Plastics, Sample Preparation (88),'' is withdrawn, under previous item 26, from the list of recognized consensus standards. USP 23, ''Biological Reactivity Tests, In Vivo, Classification of Plastics, Sample Preparation (1988),'' is added back, under current item 31, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

5. ASTM F750 is withdrawn, under previous item 10, from the list of recognized consensus standards. The latest version of the standard ASTM F750–96 is added, under current item 32, to the list of recognized standards.

6. ASTM E1372–90 is withdrawn, under previous item 4, from the list of recognized consensus standards. ASTM E1372–95 is added, under current item 33, to the list of recognized standards.

7. ASTM F749–87 (r1996) is withdrawn, under previous item 9, from the list of recognized consensus standards. The latest version of the standard ASTM F749–98 is added, under current item 34, to the list of recognized standards.

8. ASTM F763–87 is withdrawn, under previous item 11, from the list of recognized consensus standards. ASTM F763–87 (1993) is added, under current item 35, to the list of recognized standards.

9. ASTM F1408–92 is withdrawn, under previous item 15, from the list of recognized consensus standards. ASTM F1408–97 is added, under current item 36, to the list of recognized standards.

D. Cardiovascular/Neurology

1. ASTM F75–92 is withdrawn, under previous item 6, from the list of recognized consensus standards. ASTM F75–98 is added, under current item 21, to the list of recognized standards.

2. ASTM F90–96 is withdrawn, under previous item 7, from the list of recognized consensus standards. ASTM F90–97 is added, under current item 22, to the list of recognized standards.

3. ASTM F136–96 is withdrawn, under previous item 8, from the list of recognized consensus standards. ASTM F136–98 is added, under current item 23, to the list of recognized standards.

4. ASTM F560–92 is withdrawn, under previous item 10, from the list of recognized consensus standards. ASTM F560–98 is added, under current item 24, to the list of recognized standards.

E. General Plastic Surgery/General Hospital

1. IEC 60601–2–19 (1990–12) is withdrawn, under previous item 7, from the list of recognized consensus standards. IEC 60601–2–19 (1996) is added, under current item 29, to the list of recognized standards.

2. IEC 60601–2–20 (1990–12) is withdrawn, under previous item 8, from the list of recognized consensus standards. IEC 60601–2–20 (1996) is added, under current item 32, to the list of recognized standards.

3. USP 21, ''Absorbable Surgical Sutures,'' is withdrawn, under previous item 22, from the list of recognized consensus standards. The latest version of USP 23, ''Absorbable Surgical Sutures,'' is added, under current item 40, to the list of recognized standards.

4. USP 21, ''Nonabsorbable Surgical Sutures,'' is withdrawn, under previous item 23, from the list of recognized consensus standards. The latest version of USP 23, ''Nonabsorbable Surgical Sutures,'' is added, under current item 41, to the list of recognized standards.

5. USP 21, ''Sutures—Diameter <861>,'' is withdrawn, under previous item 24, from the list of recommended consensus standards. USP 23, ''Sutures— Diameter <861>,'' is added, under current item 42, to the list of recognized standards.

6. USP 21, ''Sutures Needle Attachment <871>,'' is withdrawn, under previous item 25, from the list of recognized consensus standards. USP 23, ''Sutures Needle Attachment <871>,'' is added, under current item 43, to the list of recognized standards.

7. USP 21, ''Tensile Strength <881>,'' is withdrawn, under previous item 26, from the list of recognized consensus standards. USP 23, ''Tensile Strength <881>,'' is added, under current item 44, to the list of recognized standards.

F. Ob-Gyn/Gastroenterology

1. ASTM D3492–96 was inadvertently listed twice and is withdrawn, under previous items 2 and 15, from the list of recognized consensus standards. The latest version of the standard ASTM 3492–97 is added, under current item 17, to the list of recognized standards, with changes to the extent of recognition made in the supplementary sheet(s) for the recognized standard.

2. For ISO Standards for ''Rubber Condoms,'' Parts 1 through 9, specifically: ISO 4074–1:1996(E), ISO 4074–2:1994(E), ISO 4074–3:1994(E), ISO 4074–5:1996(E), ISO 4074–6:1996(E), ISO 4074–7:1996(E), and ISO 4074–9:1996(E), which were identified under previous items 8 through 14, respectively, on the list of recognized consensus standards, the FDA technical contact person has been changed on the supplementary information sheets for the recognized standards. These standards remain identified under current items 8 through 14 on the list of recognized standards.

G. Ophthalmic

1. For ISO 10942 listed, under previous item 13, on the list of recognized consensus standards, the previously omitted publication date of 1988 has been added. ISO 10942:1998 remains identified, under current item 13, on the list of recognized standards.[2]

H. Sterility

1. ANSI/AAMI/ISO 10993–7:1995 is withdrawn, under previous item 23, from the list of recognized consensus

[2] These minor revisions are not identified in the listing of ''Modifications to the List of Recognized Standards,'' but are to be included in the current list in the ''FDA Recognized Consensus Standards Appendix A.''

standards. ANSI/AAMI/ISO 10993–7:1995 is added, under current item 37, to the list of recognized standards, with changes to the extent of recognition made in the supplementary information sheet(s) for the recognized standard.

III. List of Recognized Standards

The complete list of consensus standards to be recognized for use in premarket review and to meet other requirements is contained in the document, ''FDA Recognized Consensus Standards Appendix A.'' The modifications and minor revisions to the list of recognized standards set forth in this document are to be incorporated in that document, which is maintained on the FDA World Wide Web (WWW) site, ''http://www.fda.gov/cdrh/modact/recstand.html''. Also posted on the WWW site are supplementary information sheets for each recognized standard. These information sheets list the address(es) where the standard can be obtained, information on any limitations on the application of the standard in medical device review or in satisfying other regulatory requirements, and a list of devices for which declarations of conformity with the recognized standard will be routinely accepted by agency reviewers. In addition to these documents, the WWW site contains answers to frequently asked questions regarding the use of recognized standards.

Additional modifications and minor revisions, as needed, to the list of recognized consensus standards will be announced in the **Federal Register** once a year, or more often if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive the guidance entitled ''Guidance on the Recognition and Use of Consensus Standards,'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 321, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of the guidance may also do so by using the WWW. CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the ''Guidance on the Recognition and Use of Consensus Standards,'' as well as the current list in the ''FDA Recognized Consensus Standards Appendix A,'' ''Supplementary Information'' sheets for each recognized standard, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''. The ''Guidance on the Recognition and Use of Consensus Standards'' is available at ''http://www.fda.gov/cdrh/ modact/k982.html''. The ''FDA Recognized Consensus Standards Appendix A'' may be accessed at ''http://fda.gov/cdrh/modact/recstand.html'' and provides hyperlinks to the ''Supplementary Information'' sheets for listed recognized standards.

VI. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. 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 will be considered in determining whether to amend the current listing of ''Modifications to the List of Recognized Standards.''

The listing of ''Modifications to the List of Recognized Standards'' is set forth below:

Item Number	Title of Standard	Reference Number and Date
	Generally Acceptable Standards	
10	Medical Devices—Risk Management—Part 1: Application of Risk Analysis	AAMI/ISO 14971–1 (1998)
11	Sampling Procedures and Tables for Inspection by Attributes	ISO 2859 (1995)
12	Quality Assurance Requirements for Measuring Equipment Part 1: Metrological Confirmation System for Measuring Equipment	ISO 10012 (1993)
13	Biological Evaluation of Medical Devices Part 1: Evaluation and Testing	ISO 10993–1 (1997)
14	Inspection by Attributes	ANSI/ASQC Z1.4 (1993)
15	Inspection by Variables	ANSI/ASQC Z1.9 (1993)
16	Test Methods for Peel or Stripping Strength of Adhesive Bonds	ASTM D–903 (1993)
17	Standard Practice for Performance Testing of Shipping Containers and Systems	ASTM D–4169 (1993)
18	Standard Practice for Conditioning Containers, Packages, or Packaging Components for Testing	ASTM D–4332 (1991)
19	Standard Practice for Use of Statistics in the Evaluation of Spectrometric Data	ASTM E–876 (1995)
20	Standard Test Method for Failure Resistance of Unrestrained and Nonrigid Packages for Medical Applications	ASTM F–1140 (1988)
21	Medical Devices—Risk Management	EN 1441 (1997)

Item Number	Title of Standard	Reference Number and Date
	Anesthesia	
23	Conical Fittings of 15 millimeters (mm) and 22 mm Sizes	ASTM F 1054 (1987)
24	Standard Specification for Capnometers	ASTM F 1456 (1992)
25	Specification for Oxygen Analyzers	ASTM F 1462 (1993)
26	Standard Color Marking of Compressed Gas Containers Intended for Medical Use	CGA C–9 (1988)
27	Standard for Compressed Gas Cylinder Valve Outlets and Inlet Connection	CGA V–1 (1994)
28	Diameter-Index Safety System	CGA V–5 (1989)
29	Standard Method of Determining Cylinder Valve Outlet Connections for Medical Gases	CGA V–7 (1997)
30	Medical Electrical Equipment Part 2: Particular Requirements for the Safety of Anesthetic Machines	IEC 60601–2–13 (1989)
31	Anesthetic and Respiratory Equipment—Conical Connectors	ISO 5356–1 (1996)
32	Oxygen Monitors for Monitoring Patient Breathing Mixtures—Safety Requirements	ISO 7767 (1997)
33	Capnometers for Use With Humans—Requirements	ISO 9918 (1993)
	Biocompatibility	
28	Biological Evaluation of Medical Devices—Part 12: Sample Preparation and Reference Materials	ANSI/AAMI/ISO 10993–12 (1996)
29	Biological Evaluation of Medical Devices—Part 5: Tests for Cytotoxicity: In Vitro Methods	ISO 10993–5 (1998)
30	Standard Practice for Testing Guinea Pigs for Contact Allergens: Guinea Pig Maximization Test	ASTM F720–81 (r1996)
31	Biological Reactivity Tests, In Vivo, Classification of Plastics-Sample Preparation	USP 23 (1988)
32	Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	ASTM F750 (1996)
33	Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	ASTM E1372–95
34	Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	ASTM F749–98
35	Standard Practice for Short Term Screening for Implant Material	ASTM F763–87 (1993)
36	Standard Practice for Subcutaneous Screening Test for Implant Materials	ASTM F1408–97
	Cardiovascular/Neurology	
21	Specification for Cobalt-28 Chromium-6 Molyb- denum Casting Alloy and Cast Products for Surgical Implants (UNS R30075)	ASTM F75–98
22	Specification for Wrought Cobalt–20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	ASTM F90–97
23	Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (UNS R56401) for Surgical Implant Applications	ASTM F136–98
24	Specification for Unalloyed Tantalum for Surgical Implant Applications	ASTM F560–98
	Dental/ENT	
40	Specification for Audiometers	ANSI S3.6 (1996)
41	Specification of Hearing Aid Characteristics	ANSI S3.22 (1996)
42	Dental Impression Compound	ANSI/ADA Specification No. 3 (1994)
43	Dental Casting Alloys	ANSI/ADA Specification No. 5 (1988)
44	Agar Impression Material	ANSI/ADA Specification No. 11 (1968)
45	Denture Cold-Curing Repair Resin	ANSI/ADA Specification No. 13 (1981)
46	Dental Base Metal Casting Alloys	ANSI/ADA Specification No. 14 (1982)
47	Synthetic Resin Teeth	ANSI/ADA Specification No. 15a (1992)
48	Dental Impression Paste Zinc Oxide-Eugenol Type	ANSI/ADA Specification No. 16 (1989)
49	Denture Base Temporary Reclining Resin	ANSI/ADA Specification No. 17 (1983)
50	Alginate Impression Materials	ANSI/ADA Specification No. 18 (1992)
51	Dental Duplicating Material	ANSI/ADA Specification No. 20 (1968)
52	Resin-Based Filling Materials	ANSI/ADA Specification No. 27 (1993)
53	Dental Zinc Oxide-Eugenol and Zinc Oxide Non-Eugenol Cements	ANSI/ADA Specification No. 30 (1990)
54	Metal-Ceramic Systems	ANSI/ADA Specification No. 38 (1991)
55	Ultraviolet Activator and Disclosing Lights	ANSI/ADA Specification No. 48 (1983)

Item Number	Title of Standard	Reference Number and Date
56	Endodontic Sealing Materials	ANSI/ADA Specification No. 57 (1993)
57	Dental Ceramic	ANSI/ADA Specification No. 69 (1991)
58	Endodontic Obturating Points	ANSI/ADA Specification No. 78 (1994)
59	Color Stability Test Procedure	ANSI/ADA Specification No. 80 (1997)
60	Dental Water-Based Cements	ANSI/ADA Specification No.96 (1994)
61	Dental Casting Gold Alloys	ISO 1562 (1993)
62	Dental Alginate Impression Material	ISO 1563 (1990)
63	Dental Aqueous Impression Materials Based on Agar	ISO 1564 (1995)
64	Dental Zinc Oxide/Eugenol Cements and Zinc Oxide Non-Eugenol Cements	ISO 3107 (1988)
65	Dentistry—Synthetic Polymer Teeth	ISO 3336 (1993)
66	Dentistry—Resin-Based Filling Materials	ISO 4049 (1988)
67	Dental Base Metal Casting Alloys—Part 1: Cobalt-Based Alloys	ISO 6871–1 (1994)
68	Dental Base Metal Casting Alloys—Part 2: Nickel-Based Alloys	ISO 6871–2 (1994)
69	Dental Ceramic	ISO 6872 (1995) Amendment 1 (1997)
70	Dental Resin-Based Pit and Fissure Sealants	ISO 6874 (1988)
71	Dental Root Canal Sealing Materials	ISO 6876 (1986)
72	Dental Root-Canal Obturating Points	ISO 6877 (1995)
73	Dentistry—Preclinical Evaluation of Biocompatibility of Medical Devices Used in Dentistry—Test Methods for Dental Materials	ISO 7405 (1997)
74	Dental Units	ISO 7494 (1996)
75	Part 1: High-Speed Air Turbine Handpieces	ISO 7785–1 (1997)
76	Part 2: Straight and Geared Angle Handpieces	ISO 7785–2 (1995)
77	Dental Casting Alloys With Noble Metal Content of 25% Up to but Not Including 75%	ISO 8891(1993)
78	Dental Handpieces—Hose Connectors	ISO 9168 (1991)
79	Dental Ceramic Fused to Metal Restorative Material	ISO 9693 (1991)
80	Dental Water-Based Cements	ISO 9917 (1991)
81	Dentistry—Resilient Lining Materials for Removable Dentures—Part 1: Short Term Materials	ISO 10139–1 (1991)
82	Dentistry—Polymer-Based Crown and Bridge Materials	ISO 10477 (1998)
83	Dental Handpieces: Dental Low Voltage Electrical Motors	ISO 11498 (1997)
84	Dental Handpieces—Dental Air-Motors	ISO 13294 (1997)
	General Plastic Surgery/General Hospital	
29	Medical Electrical Equipment—Part 2: Particular Requirements for Safety of Baby Incubators	IEC 60601–2–19 (1996)
30	Standard Specification for Rubber Surgical Gloves	ASTM D3577 (1998)
31	Standard Specification for Rubber Examination Gloves	ASTM D3578 (1995)
32	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Transport Incubators	IEC 60601–2–20 (1996)
33	Standard Specification for Rubber Finger Cots	ASTM D3772 (1997)
34	Standard Test Method for Detection of Holes in Medical Gloves	ASTM D5151 (1992)
35	Standard Specification for Poly (vinyl chloride) Gloves for Medical Application	ASTM D5250 (1992)
36	Standard Test Method for Resistance of Medical Face Masks to Penetration by Synthetic Blood (Horizontal Projection of Fixed Volume at a Known Velocity)	ASTM F862 (1998)
37	Standard Specification for Conical Fittings of 15-mm and 22-mm Sizes	ASTM F1054 (1987)
38	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Blood-Borne Pathogens Using Phi-X174 Bacterio-phage Penetration as Test System	ASTM F1671 (1997b)
39	Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	ASTM F1670 (1997)
40	Absorbable Surgical Sutures	USP 23
41	Nonabsorbable Surgical Sutures	USP 23
42	Sutures—Diameters <861>	USP 23
43	Sutures Needle Attachment <871>	USP 23
44	Tensile Strength <881>	USP 23
45	Standard Test Method for Residual Powder on Medical Gloves	ASTM D6124–97
	In Vitro Devices	
49	Performance Goals for the Internal Quality Control of Multichannel Hematology Analyzers; Approved Standard	NCCLS H26–A (1996)
50	Glossary and Guidelines for Immunodiagnostic Procedures, Reagents, and Reference Materials—Second Edition; Approved Guideline	NCCLS D11–A2

Item Number	Title of Standard	Reference Number and Date
51	Using Proficiency Testing (PT) to Improve the Clinical Laboratory; Approved Guideline	NCCLS GP27–A
52	Terminology and Definition for Use in NCCLS Documents; Approved Standard	NRSCL 8–A
53	Continuous Quality Improvement: Essential Management Approaches; Approved Guideline	NCCLS GP22–A
	OB–GYN/Gastroenterology	
16	Enteral Feeding Set Connectors and Adapters	ANSI/AAMI ID54 (1996)
17	Standard Specifications for Rubber Contraceptives (Male Condoms)	ASTM D3492–97
18	Electrosurgical Device	ANSI/AAMI HF–18 (1993)
	Ophthalmic	
14	Ophthalmics—Contact Lenses—Standard Terminology, Tolerances, Measurements, and Physicochemical Properties	ANSI Z80.20–1998
	Radiology	
44	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	AIUM (1998)
45	Standard for Real-Time Display of Thermal andMechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment. Revision 1.	AIUM RTD (1998)
46	Acoustic Output Labeling Standard for Diagnostic Ultrasound Equipment: A Standard for How Manufacturers Should Specify Acoustic Output Data	AIUM AOL (1998)
47	Medical Electrical Equipment: Radionuclide Calibrators *B* Particular Methods for Describing Performance	IEC 61303 (1994–10)
48	Calibration and Usage of ''Dose Calibrator'' Ionization Chambers for the Assay of Radionuclides	ANSI N42.13 (1986)
49	Calibration and Usage of Ionization Chamber Systems for Assay of Radionuclides	IEC 61145 (1992–05)
	Software	
2	Standard for Developing Software Life Cycle Processes	IEEE 1074 (1997)
3	Industry Implementation of International Standard ISO/IEC 12207: 1995 (ISO/IEC 12207) Standard for Information Technology—Software Life Cycle Processes	IEEE/EIA 12207.0 (1996)
	Sterility	
37	Biological Evaluation of Medical Devices—Part 7: Ethylene Oxide Sterilization Residuals	ANSI/AAMI/ISO 10993–7 (1995)

Dated: June 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy.

[FR Doc. 99–17429 Filed 7–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–289]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because of the unanticipated urgency to meet the enrollment cycle of the program, thereby reducing the burden on the demonstration sites. HCFA is supporting the demonstration within the current fiscal year, and as an agency priority. In addition, public harm may occur as the result of not evaluating and possibly providing alternative health care measures outlined in this demonstration.

HCFA is requesting OMB review and approval of this collection within three days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within three days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;

Title of Information Collection: Medicare Lifestyle Modification Program Demonstration;

Form No.: HCFA–R–289;

Use: The Health Care Financing Administration (HCFA) through its Office of Clinical Standards and Quality (OCSQ) is planning to conduct a new demonstration to test the feasibility and cost effectiveness of cardiovascular lifestyle modification. This demonstration will focus on Medicare provider sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the indications of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration will test the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries. In addition, the demonstration will test the use of contractual agreements for administration, claims processing and payment, and routine monitoring of quality of care.

Frequency: On occasion, Monthly, and Quarterly;

Affected Public: Individuals or Households, and Not-for-profit institutions;

Number of Respondents: 12;

Total Annual Responses: 4,500;

Total Annual Hours: 750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within three days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 1, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–17559 Filed 7–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: July 22, 1999.

Time: 8:30 am to 5 pm

Agenda: To review and evaluate cooperative agreement applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eugene G. Hayunga, Ph.D., Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@od.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–17592 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Clinical Data Management and Support Center.''

Date: July 13, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

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: National Institute on Drug Abuse Special Emphasis Panel, ''INVEST.''

Date: August 4, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 2, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17509 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Exploratory Research Grants (R21).

Date: July 13–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: J. Patrick Mastin, PhD., Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17586 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: July 27, 1999.

Time: 2:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Craig A. Jordan, PHD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–17587 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: July 8–9, 1999.

Time: 2:00 pm and 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, Broad Street and Locust Streets, Philadelphia, PA 19107.

Contact Person: Michael A. Sesma, PHD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17588 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 9, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PHD, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892, 301–594–4952.

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: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 13, 1999.

Time: 8:00 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place : Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17591 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, P01 Oldest-old Mortality-Demographic Models and Analysis.

Date: July 28, 1999.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Suite 502C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, Ph.D, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–17593 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel SEP for Dr. Chute and Dr. Lyon.

Date: July 29, 1999.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharee Pepper PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–17589 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Workshop on Development of New Therapies for Rare Blood Diseases

Notice is hereby given of a workshop on the ''Development of New Therapies for Rare Blood Diseases'' sponsored by the National Heart, Lung, and Blood Institute and the Office of Rare Diseases, N.I.H., to be held from 9 a.m. to 4 p.m. on Wednesday, July 14, 1999, in the Lister Hill Auditorium on the N.I.H. campus in Bethesda, MD.

Historically, it has been difficult to develop new therapies for rare diseases, in part because of limited financial incentives and few patients available to do rigorous clinical trials. This problem has been particularly frustrating in the area of blood diseases, where the pathophysiologic defects may be well understood. For example, the first human molecular defect was

demonstrated in sickle cell disease in 1956, but it still presents a formidable clinical challenge. Since it has been difficult to stimulate commercial development of basic research into clinical application, the purpose and goals of the workshop are to:

1. Identify the barriers to the translation of basic scientific discoveries to clinical treatment of rare blood diseases.

2. Identify mechanisms to overcome these barriers.

The outcome of this meeting will improve or create approaches to expedite the development of new therapies for rare blood diseases. All individuals interested in facilitating this process are invited to attend. Further information can be found on the NHLBI website, *http://www.nhlbi.nih.gov*. For pre-registration, please contact Henry Chang, M.D., Acting Director, Blood Resources Program, Division of Blood Diseases and Resources, NHLBI, NIH, MSC 7950, 6701 Rockledge Dr., Room 10170, Bethesda, MD 20892–7950, Phone: 301–435–0067, FAX: 301–480–1060, E-mail *changh@nih.gov*.

Dated: July 2, 1999.

Barbara Alving,

Director, Division of Blood Diseases and Resources.

[FR Doc. 99–17508 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 14, 1999.

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: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–17, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20, 1999.

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: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–17590 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 1999.

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: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 14, 1999.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, Darnestown Conference Room, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Herman Teitelbaum, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 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.

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: Genetic Sciences Initial Review Group, Biological Sciences Subcommittee 1.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact Person: Nancy Pearson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, N.W., Washington, DC 20037.

Contact Person: H. Mac Stiles, DDS, Phd, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15, 1999.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15, 1999.

Time: 1:30 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 40461, MSC 7890, Bethesda, MD 20892, (301) 435–1159.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 15–16, 1999.

Time: 2:00 to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

Time: 9:00 am to 1:00 am.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 16, 1999.

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: Everett E. 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.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Judith U. Cope, MD, MPH, Special Expert, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.
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: Ron Manning, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 19–20, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Gertrude K. McFarland, RN, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 19–20, 1999.
Time: 8:30 am to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel p41.
Date: July 19, 1999.
Time: 1:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (telephone Conference call.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892. (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel MDCN–5.
Date: July 19, 1999.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Nadarajen A. 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, vydelinn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167 srinvar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 1999.
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: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 20, 1999.
Time: 2:00 pm to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–3(2).
Date: July 21–22, 1999.
Time: .8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Michael Micklin, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, 301–435–0682.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 21–22, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Washington, DC 20007.
Contact Person: Martin Slater, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 21–22, 1999.
Time: 9:00 am to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.
Contact Person: A. Hameed Khan, Phd., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 21, 1999.
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: Russell T. Dowell, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–17594 Filed 7–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

SAMHSA Special Emphasis Panels; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in August 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual

grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 2–5, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 2–4, 1999, 8:30 a.m.–5:00 p.m.; August 5, 1999, 8:30 a.m.–adjournment.
Panel: Community Initiated Interventions SP 99–001 (3 Committees).
Contact: Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 3, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 3, 1999, 8:30 a.m.–adjournment.
Panel: Iowa Prevention Initiative Supplement SP 99–006.
Contact: Amie Rogal, Room 17–89, Parklawn Building, Telephone: 301–443–8216 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 9–13, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 9–12, 1999, 8:30 a.m.–5:00 p.m.; August 13, 1999, 8:30 a.m.–adjournment.
Panel: Family Strengthening SP 99–002 (6 Committees).
Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 16–19, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 16–18, 1999, 8:30 a.m.–5:00 p.m; August 19, 1999, 8:30 a.m.–adjournment.
Panel: Targeted Capacity HIV/AIDS TI 99–004 (3–5 Committees).
Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 16–19, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 16–18, 1999, 8:30 a.m.–5:00 p.m.; August 19, 1999, 8:30 a.m.–adjournment.
Panel: State Treatment Needs Assessment TI 99–008.
Contact: Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–2290 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 23–26, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 23–25, 1999, 8:30 a.m.–5:00 p.m.; August 26, 1999, 8:30 a.m.–adjournment.
Panel: Targeted Substance Abuse/HIV Prevention SP 99–003 (4–5 Committees).
Contact: Raquel Crider, Ph.D., Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437.

Dated: July 1, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17605 Filed 7–9–99; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

SAMHSA Special Emphasis Panels; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in July.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: July 26–30, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 26–29, 1999, 8:30 a.m.–5 p.m.; July 30, 1999, 8:30 a.m.–Adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Dated: June 30, 1999.

Coral Sweeney,

Lead GTA, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–17606 Filed 7–9–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Alaska Notice for Publication; F–19155–4; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Gwitchyaazhee Corporation for 22,000.58 acres. The lands involved are in the vicinity of Fort Yukon, Alaska.

Fairbanks Meridian, Alaska

T. 18 N., R. 9 E.
T. 19 N., R. 10 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News Miner.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 11, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stephanie Clusiau,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 99–17558 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–53202]

Realty Action; FLPMA Lease of Public Lands in Southeast Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease of public land.

SUMMARY: The following public lands in the area near the confluence of the Tahini River and the Chilkat River in Southeast Alaska have been examined and found suitable for non-competitive lease to the State of Alaska, Department of Fish and Game, Sport Fish Division, under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920. The State of Alaska, Department of Fish and Game, proposes to lease the Tahini River Research Site for ten years, or until two days prior to conveyance of the lands to the State of Alaska, whichever occurs first. The lease is intended to authorize operation and maintenance of the existing facilities on site.

Copper River Meridian, Alaska

T. 26 S., R. 55 E.,
Sec. 12, NE¼NW¼.

Containing approximately .2 acre on the bank of the Tahini River.

SUPPLEMENTARY INFORMATION: These lands have been selected by the State of Alaska for future conveyance under the Alaska Statehood Act.

DATES: For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Lorri Denton, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599; (907) 267–1244 or (800) 478–1263.

Dated: June 29, 1999.

Nick Douglas,

Field Manager.

[FR Doc. 99–17636 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–77687]

Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification; Juneau, AK

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following public lands in Juneau, Alaska have been examined and found suitable for classification for lease to the City and Borough of Juneau (C&BJ) under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*). C&BJ proposes to use the lands for a Water Treatment Plant.

Copper River Meridian, Alaska

T. 41 S., R. 67 E.,
Sec. 9, All.
U.S. Survey No. 3824.

Containing 0.20 acre more or less.

The lands are not needed for Federal purposes. Lease is consistent with current BLM land use planning and will be in the public interest. The lease, when issued, will be subject to the following terms, conditions and reservations:

1. *Nondiscrimination.* Nondiscrimination as to access to or use of the land and facilities based on race, color, sex, creed, national origin, or handicap (43 CFR 17, Subparts A and B) must be guaranteed.

2. *Development and Management Plans.* Leases must be conditioned on adherence to these plans. The approved plan of management and development upon which the lease was considered and issued is required. No modifications will be made without prior consent of the authorized officer.

3. *Lease Period.* The terms of the lease shall be 25 years, renewable and/or transferable.

4. *Hazardous Materials.* Requirements for proper handling of hazardous materials, such as chlorine gas, are referenced in the R&PP lease.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Water Treatment Plant. 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. The BLM is required to follow proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Water Treatment Plant.

DATES: Interested parties may submit comments on or before August 26, 1999.

ADDRESSES: Comments must be submitted to the Anchorage Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Bonds, BLM, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, 907–267–1239, or 1–800–478–1263.

Dated: July 6, 1999.

Nicholas E. Douglas,

Anchorage Field Manager.

[FR Doc. 99–17637 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–32958]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N–32958 in its entirety. The land will be opened to the public land laws, including location and entry under the mining laws, subject to valid existing rights.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445, or 775–623–1500.

SUPPLEMENTARY INFORMATION: R&PP Classification N–32958, is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 32 N., R. 23 E.,
Sec. 16: NW¼NW¼NW¼NE¼.

Totalling 2.5 acres more or less in Humboldt County.

On April 15, 1981 the Bureau of Land Management received an application for lease from the Gerlach High School, of Gerlach Nevada, to place a ''G'' constructed of gravel, on the subject lands as symbol of their school spirit. On October 22, 1981, the lands were classified as suitable, pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), segregating the subject land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. On 10/23/86, the Gerlach High School filed a request for relinquishment of Lease N–32958. On November 25, 1986, BLM accepted that relinquishment, but failed to terminate the R&PP classification opening the lands to entry.

At 9 a.m. on August 2, 1999, the land encumbered by R&PP Classification N–32958 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 2, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 2, 1999.

Michael R. Holbert,

Associate Field Manager, Winnemucca.

[FR Doc. 99–17521 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Modifications to the Bid Adequacy Procedures

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notification of procedural change.

SUMMARY: The Minerals Management Service (MMS) has changed a criterion in its existing bid adequacy procedures for ensuring receipt of fair market value on Outer Continental Shelf (OCS) oil and gas leases. The change ensures consistency in the evaluation of tracts.

DATES: This modification is effective July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536. The revised bid adequacy procedures are described below.

What Definitions Apply to These Procedures?

The MROV is a dollar measure of a tract's expected net present value, if that tract is leased in the current sale. The calculation of the MROV allows for exploration and economic risk, and includes tax consequences, e.g., depletion of the cash bonus.

The delayed MROV (DMROV) is a measure used to determine the size of the high bid needed in the current sale to equalize it with the discounted sum of the bonus and royalties expected in the next sale, less the foregone royalties from the current sale. The bonus for the next sale is computed as the MROV associated with the delay in leasing under the projected economic, engineering, and geological leasing receipts conditions, including drainage. If the high bid exceeds the DMROV, then the leasing receipts from the current sale are expected to be greater than those from the next sale, even in cases in which the MROV exceeds the high bid.

The Adjusted Delayed Value (ADV) is the minimum of the MROV and the DMROV.

The RAM is the revised arithmetic average measure of the MROV and all qualified bids on a tract that are equal to at least 25 percent of the high bid.

Anomalous bids are all but the highest bid submitted for a tract by the same company (bidding alone or jointly with another company), parent, or subsidiary. These bids are excluded when applying the number of bids rule or any other bid adequacy measure.

Legal bids are those bids which comply with the MMS regulations (30 CFR 256) and the Notice of Sale, e.g., equal or exceed the specified minimum bid. Any illegal bid will be returned to the bidder.

Qualified bids are those bids that are legal and not anomalous.

MONTCAR is a probabilistic, cash flow computer simulation model used to conduct a resource-economic evaluation that results in an estimate of the expected net present value of a tract (or prospect).

Nonviable tracts or prospects are those geographic or geologic configurations of hydrocarbons that are estimated to be uneconomic to produce with the costs and anticipated future prices used in the analysis.

Within the context of our bid adequacy procedures, the term ''unusual bidding patterns'' typically refers to a situation in which two or more companies bid against each other more often than would normally be expected. Companies could agree to bid against each other on certain sets of tracts in a sale so that the number of bids rule would apply for bid acceptance. Other forms of unusual bidding patterns exist as well, and generally involve anti-competitive practices, e.g., if it appears that companies are attempting to avoid bidding against each other in a sale on a set of prospective tracts.

A confirmed tract is a previously leased tract having a well(s) which encountered hydrocarbons and may have produced. It contains some oil and/or gas resources whose volume may or may not be known.

A development tract is a tract which has nearby productive (past or currently capable) wells with indicated hydrocarbons and which is not interpreted to have a productive reservoir extending under the tract. There should be evidence supporting the interpretation that at least part of the tract is on the same general structure as the proven productive well.

A drainage tract is a tract which has a nearby well which is capable of producing oil or gas, and the tract could incur drainage if and when such a well is placed on production. The reservoir, from which the nearby well is capable of producing, is interpreted to extend under the drainage tract to some extent.

A wildcat tract is a tract which has neither nearby productive (past or currently capable) wells, nor is interpreted to have a productive reservoir extending under the tract. It has high risk in addition to sparse well control.

Water depth categories for bid adequacy purposes in the Gulf of Mexico are designated as (1) less than 800 meters and (2) 800 meters or more.

If different water depth categories are used for a Gulf of Mexico sale, they will be specified in the sale's final notice. For areas other than the Gulf of Mexico, all tracts will be considered to be in the same water depth category, unless an alternative is specified in the final notice of sale.

What Problem Is Addressed by the Change?

In any OCS lease sale, a limited number of tracts may be reclassified from drainage or development (DD) in Phase 1 of the bid evaluation process to confirmed or wildcat (CW) in Phase 2. (The MMS reclassifies a tract if additional Phase 2 analysis supports a classification different than the one assigned the tract in Phase 1 of the evaluation.) However, under the old bid adequacy procedures, a tract classified as CW in Phase 1 was evaluated under different criteria than a tract that was reclassified as CW in Phase 2. This change ensures the consistent treatment of similarly classified tracts whether they are evaluated in Phase 1 or Phase 2.

What Change Is Being Made?

In Phase 1 of the bid adequacy procedures, the MMS classifies tracts as either CW or DD based on information available at the time of sale. Under the old (February 10, 1999) guidelines, tracts within designated water depth categories that were reclassified from DD to CW in Phase 2 only had to have a third largest bid within 50 percent of the high bid to be accepted. Now, DD tracts reclassified as CW tracts must satisfy the same criteria for acceptance that would have had to been met if they were classified as CW in Phase 1.

To ensure consistency in evaluations, the following change is being made. In Phase 1, for CW tracts receiving three-or-more qualified bids, acceptance under the number of bids rule will apply only if the third largest bid is within 50 percent of the high bid, and if the high bid is in the top 75 percent of high bids on a per acre basis for all three-or-more-bid tracts within designated water depth categories. In Phase 2 of the bid evaluation process, DD tracts that have been reclassified as CW will be subject to the same screening criteria that the CW tracts with three-or-more bids had to meet in Phase 1.

How Are Bids Evaluated?

During the bid review process, we conduct evaluations in a two-phased procedure for bid adequacy determination. We also review bids to ensure that they are for at least the minimum amount specified in the notice of sale and that unusual bidding patterns are not present.

What Happens in Phase 1 of the Bid Adequacy Procedures?

In Phase 1, we partition the tracts receiving bids into three general categories:

1. Those tracts with three-or-more bids, on which competitive market forces can be used to assure fair market value;
2. Those tracts which we identify as being nonviable based on adequate data and maps; and
3. Those tracts which we identify as being viable and on which we have the most detailed and reliable data, including tracts classified as DD.

What Phase 1 Rules Are Applied to All Tracts Receiving Bids?

Six Phase 1 rules are applied to all tracts receiving bids:

1. We accept the highest qualified bid on viable CW tracts receiving three-or-more qualified bids if the third largest bid on the tract is at least 50 percent of the highest qualified bid and if the high bid per acre ranks in the top 75 percent of high bids for all three-or-more-bid tracts within a specified water depth category.
2. We accept the highest qualified bid on CW tracts that we determine to be nonviable.
3. We pass to Phase 2 all tracts that require additional information to make a determination on viability or tract type.
4. We pass to Phase 2 all viable CW tracts receiving one or two qualified bids.
5. We pass to Phase 2 all viable CW tracts receiving three-or-more qualified bids if either the third largest such bid is less than 50 percent of the highest qualified bid or if the high bid per acre ranks in the lowest 25 percent of high bids for all three-or-more-bid tracts in the specified water depth category.
6. We pass to Phase 2 all DD tracts.

How is the Percentile Ranking of a Tract's High Bid Calculated?

The percentile ranking of a tract's high bid is calculated by multiplying 100 times the ratio of the numerical ordering of the three-or-more-bid tract's high bid to the total number of all three-or-more-bid tracts in the designated water depth. For example, suppose there are 21 total tracts identified in Phase 1 as receiving three-or-more-bids in the designated water depth category of at least 800 meters. All tracts in this set having a high bid among the top 15 high bids would satisfy the 75 percent requirement; the 15th ranked high bid would represent the 71st percentile, i.e., (100*(15/21)=71).

Can any Other Procedures be Used in Phase 1 to Ensure the Receipt of Fair Market Value?

In ensuring the integrity of the bidding process, the Regional Director may identify an unusual bidding pattern at any time during the bid review process, but before a tract's high bid is accepted. If the finding is documented, the Regional Director has discretionary authority, after consultation with the Solicitor, to pass those identified tracts to Phase 2 for further analysis. The Regional Director may eliminate all but the largest of the unusual bids from consideration when applying any bid adequacy rule, may choose not to apply a bid adequacy rule, or may reject the tract's highest qualified bid.

How Long Does it Take To Complete the Phase 1 Procedures?

These procedures are generally completed within 3 weeks of the bid opening. All the leases that will be awarded as a result of the Phase 1 analysis are announced at the end of this period.

How Long do the Phase 2 Procedures Take?

The Phase 2 bid adequacy determinations are normally completed sequentially over a period ranging between 21 and 90 days after the sale. Leases are awarded as the analysis of bids is completed over this time period. The total evaluation period can be extended, if needed, at the Regional Director's discretion (61 FR 34730, July 3, 1996).

What are the Initial Steps of the Bid Adequacy Process that are Followed in Phase 2?

Activities to assess bids are undertaken by analyzing, partitioning, and evaluating tracts in two steps:

1. Further mapping and/or analysis is performed to review, modify, and finalize viability determinations and tract classifications.
2. Tracts we identify as being viable must undergo an evaluation to determine if fair market value has been received.

What Decision Rules are Applied in Phase 2 of the Bid Evaluation Process?

After completing the initial two steps, a series of rules and procedures are followed.

1. We accept the highest qualified bid on newly classified CW tracts having three-or-more qualified bids if its third

largest bid is at least 50 percent of the highest qualified bid and if its high bid per acre ranks in the top 75 percent of high bids for all three-or-more-bid tracts that reside within its specified water depth category.

2. We accept the highest qualified bid on all tracts determined to be nonviable.

3. We determine whether any categorical fair market evaluation technique(s) will be used.

If so we:

A. Evaluate, define, and identify the appropriate threshold measure(s) for bid acceptance.

B. Accept all tracts whose individual measures of bid adequacy satisfy the threshold categorical requirements.

4. We conduct a full-scale evaluation, which could include the use of MONTCAR, on all remaining tracts passed to Phase 2 and still awaiting an acceptance or rejection decision.

What Subset of Tracts Comprise the "Remaining Tracts" That Still Need a Phase 2 Acceptance or Rejection Decision?

The remaining tracts include tracts not accepted by a categorical rule that we classify as:

1. DD tracts, or

2. CW tracts that are viable and received:

A. One or two qualified bids, or

B. Three-or-more qualified bids, if either its third largest bid is less than 50 percent of the highest qualified bid or the high bid is in the bottom 25 percent of all three-or-more-bid CW tracts within a designated water depth category.

What Procedures are Followed for Evaluating the Adequacy of Bids on These Tracts?

For these tracts we:

1. Accept the highest qualified bid, if it equals or exceeds the tract's ADV.

2. Reject the highest qualified bid on DD tracts receiving three-or-more qualified bids, if the high bid is less than one-sixth of the tract's MROV.

3. Reject the highest qualified bid on DD tracts receiving one or two qualified bids and on CW tracts receiving only one qualified bid, if the high bid is less than the tract's ADV.

What Happens Next to the Tracts Still Awaiting an Acceptance or Rejection Decision?

At this stage of the process, the tracts still awaiting a decision consist of those having a highest qualified bid that is less than the ADV that are either:

1. DD tracts receiving three-or-more qualified bids with the highest bid exceeding one-sixth of the tract's MROV or

2. Viable CW tracts that receive two-or-more qualified bids.

From these tracts, we select the following:

A. DD tracts having three-or-more qualified bids with the third largest bid being at least 25 percent of the highest qualified bid, and

B. CW tracts having two-or-more qualified bids with the second largest bid being at least 25 percent of the highest qualified bid.

We then compare the highest qualified bid on each of these selected tracts to the tract's RAM. For all these tracts, we:

1. Accept the highest qualified bid, if the high bid equals or exceeds the tract's RAM, or

2. Reject the highest qualified bid, if the high bid is less than the tract's RAM.

Finally, we identify those tracts that are still awaiting a decision, but did not meet the requirements for comparison to the RAM and we reject the high bid on these tracts.

At this point, the acceptance or rejection decisions are made on all the high bids in the sale. The successful bidders are notified and their leases are awarded after the full payment of the high bid is received. The unsuccessful bidders are notified as well and their bid deposits are returned. Unsuccessful bidders may appeal a bid rejection decision as described in 30 CFR 256.47(e)(3).

Dated: July 1, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–17662 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 1999 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. In one of these surveys, person owning property along the Salcha River will be asked about their expectations concerning Air Force training and the impacts of reported overflights on their activities and experiences.

	Estimated numbers of	
	Responses	Burden hours
Salcha River Land-owner Mail Survey	150	75

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 gathering the information in the proposed surveys. 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.

The NPS goal in conducting these surveys is to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

DATES: Public comments will be accepted on or before September 10, 1999.

Send Comments To: Darryll R. Johnson, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

FOR FURTHER INFORMATION CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email:<darryllj@u.washington.edu>; Mark E. Vande Kamp. Voice: 206–543–0378, Email: <mevk@u.washington.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Salcha River Land-owner Mail Survey.

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 National Park Service (in conjunction with a natural resource protection council

including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated date collection: At the present time, there is no automated way to gather this information because it includes asking land-owners for expectations and evaluations they associate with their experiences with military aircraft on the Salcha River.

Description of respondents: Persons owning land on the Salcha River.

Estimated average number of respondents: 150.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 30 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 75 hours.

Leonard Stowe,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–17650 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 1999 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. In one of these surveys, visitors entering Harding Lake and Chena River State Recreation Areas (SRAs) will be asked about their expectations concerning Air Force training, and will be sent a mail questionnaire asking about the impacts of reported overflights on their activities and experiences.

Estimated numbers of	Responses	Burden hours
Alaskan Military Operations Areas On-Site Entrance Survey	1410	235
Alaskan Military Operations Areas Mail Survey	950	396
Total	2360	631

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on these six proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to incorporate survey information into the process of setting policy to mitigate the impact of Air Force activity in the Alaskan MOAs on recreational users of those areas.

One request for further information was received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these six surveys. Further information was provided as requested. No other comments were received.

DATES: Public comments will be accepted on or before August 11, 1999.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Darryll R. Johnson, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before August 11, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email: <darryllj@u.washington.edu>; or Mark E. Vande Kamp. Voice: 206–543–0378, Email: <mevk@u.washington.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Alaskan Military Operations Areas On-Site Entrance Survey; Alaskan Military Operations Areas Mail Survey.

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 National Park Service (in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated data collection: At the present time, there is no automated way to gather this information because it includes asking visitors about the expectations and evaluations they associate with their experiences in Harding Lake and Chena River State Recreation Areas.

Description of respondents: A sample of individuals who use Harding Lake and Chena River State Recreation Areas for recreation purposes.

Estimated average number of respondents: 1410 Total respondents.

Estimated average number of responses: 2360 total responses. Approximately 950 respondents will respond twice, once to an entrance survey, and once to a mail follow-up survey, thus accounting for the difference between total respondents and total responses.

Estimated average burden hours per response: 10 minutes (Alaskan Military Operations Areas On-Site Entrance

Survey); 25 minutes (Alaskan Military Operations Areas Mail Survey).

Frequency of response: 2 times per respondent (for persons completing both the Alaskan Military Operations Areas On-Site Entrance Survey and the Alaskan Military Operations Areas Mail Survey).

Estimated annual reporting burden: 235 hours (Alaskan Military Operations Areas On-Site Entrance Survey); 396 hours (Alaskan Military Operations Areas Mail Survey); 631 Total hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–17651 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Environmental Assessment of Proposed Land Transfer, Arlington House—The Robert E. Lee Memorial, George Washington Memorial Parkway to Department of the Army, Arlington National Cemetery

ACTION: National Park Service, Interior.

ACTION: Notice of availability of an environmental assessment (EA) for land transfer from National Park Service to Department of Army, Arlington National Cemetery.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, the National Park Service has completed an EA which evaluated the potential impacts of the proposed land transfer of an area known as Section 29. The EA examines the environmental and visual impacts of the land transfer on the natural and historic resources and scenic quality of Arlington House—The Robert E. Lee Memorial. The National Park Service is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: There will be a 45-day public review period for comment on this document. Comments on the EA should be received no later than August 24, 1999.

ADDRESSES: Comments on the EA should be submitted to Ms. Audrey Calhoun, Superintendent, National Park Service, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. A limited number of copies of the EA are available on request. A public reading copy of the EA will be available at the Arlington County Main Library, the Headquarters of the George Washington Memorial Parkway and at the Arlington House—The Robert E. Lee Memorial.

And at the National Park Service web page at: http://www.nps.gov/gwmp/section29index.htm.

FOR FURTHER INFORMATION CONTACT: Ms. Audrey Calhoun, Superintendent, George Washington Memorial Parkway, McLean, VA 22101, Telephone: (703) 289–2500.

SUPPLEMENTARY INFORMATION: Section 29 is a 24.44 wooded ravine that is the remaining portion of the historic Custis-Lee estate's forested grounds at Arlington House—The Robert E. Lee Memorial (Arlington House). The forested area and the adjacent mansion are administered by the George Washington Memorial Parkway, a unit of the National Park Service (NPS), and are located in Arlington National Cemetery (ANC). The area was part of the historic forest of the Custis-Lee estate and was transferred from ANC to the NPS in 1975 to maintain the historic setting of Arlington House in perpetuity.

The Department of the Army recognized that ANC is nearing capacity and on February 22, 1995 signed an interagency agreement with the Department of the Interior to transfer a portion of Section 29 to the cemetery. The agreement divided Section 29 approximately in half, into the ''Preservation Zone'' and the ''Interment Zone''.

The Preservation Zone consists of approximately 12.5 acres to the west of Arlington House; that the agreement described as having steep slopes, a high potential for archeological resources pertaining to Arlington House, and forest cover which dates to the Lee occupancy and contributes significantly to the historic setting of Arlington House. The Interment Zone is a 12-acre area west of the Preservation Zone; which the agreement described as having no known cultural resources, slopes that are not steep, and forest cover that is not historically significant.

Implementation of the agreement required carrying out a study to consider archeological resources, cultural landscape values, and National Register eligibility; an environmental analysis of the transfer under the National Environmental Policy Act; and satisfaction of the requirements of Section 106 of the National Historic Preservation Act.

The cultural resources study was contracted and the resulting cultural investigation report identified the Arlington House Ravine Site, an archeological site of high integrity containing historic elements related to the period of the Custis-Lee occupancy and also prehistoric quarrying and tool making components. It encompasses a large portion of the project area and is an element that enhances the National Register of Historic Places listing of the site. The archeological site is the only recorded Late Archaic period quartzite quarry on National Park Service land in northern Virginia.

The cultural landscape analysis determined that much of the existing forest canopy dates to the Custis-Lee occupation and retains the historic landscape character. A forestry study demonstrated that the hardwood forest in the Preservation Zone contained trees 220–230 years old. Other portions of the project area forest have grown to maturity and presently recreate the landscape characteristics that defined the appearance and significance of the forest historically as a portion of the Arlington estate. This forest is the same type that once covered the estate, and regenerated from trees that were present historically. A representative tree in the southern Interment Zone was determined to be 258 years old. The forest constitutes the oldest and largest tract of climax eastern hardwood forest in Arlington County, Virginia.

Analysis of the resources of Section 29 identified other conditions that affect the potential for transfer of land. The Interment Zone was determined to contain significant archeological and cultural landscape resources, in addition to those of the Preservation Zone. Upon consideration of these resources, four alternatives were developed.

Alternative 1 retains the highest significance resources to NPS (The Preferred Alternative): NPS would transfer approximately 9.6 acres, comprising most of the Interment Zone, except for the southeastern sloped area containing archeological locus 1 and a stream; and also transferring to ANC the northern tip of the Preservation Zone, containing two disturbed areas. Alternative 2—retains most resources to NPS: NPS would transfer 4.3 acres of the Interment Zone between the ANC old warehouse (maintenance) area and Fort Myer. Alternative 3—retains the Preservation Zone to NPS and Interment Zone transfers to ANC: NPS would transfer the 12-acre Interment Zone to ANC and retain the 12.5-acre Preservation Zone. Alternative 4—All of Section 29 is retained by NPS (the No Action Alternative): No property would be transferred from NPS to ANC.

Public Law 104–201 directed the Secretary of the Interior to transfer to the Secretary of the Army jurisdiction over the Interment Zone, which is the plan in Alternative 3. Adoption of any of the other alternatives would require legislative action to amend the existing law.

A public meeting on the EA will be held July 21, 1999 at the Women In Military Service For America Memorial's Education Center from 7:00 p.m. until 9:00 p.m. The Memorial is located on Memorial Drive at the Gates to Arlington National Cemetery. Parking will be at the Arlington Cemetery's Visitor Parking Lot. There is a $1.25 fee per hour to park in the lot.

Dated: July 2, 1999.

Audrey F. Calhoun,

Superintendent.

[FR Doc. 99–17523 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Parkwide Trails Plan Environmental Impact Statement and General Management Plan Amendment (GMPA/EIS)

AGENCY: National Park Service. DOI.

ACTION: Notice of availability.

SUMMARY: Delaware Water Gap National Recreation Area announces the availability of the draft Trails Plan/ General Management Plan Amendment/ Environmental Impact Statement. The draft plan has been developed to meet the needs of its many visitors. This plan serves as an amendment to the park's 1987 General Management Plan. The document will be available for a 45-day public review beginning on July 2, 1999.

Public meetings will be held in early August. Notices of these meetings will be distributed to prior respondents/ participants and through the local media. For further information about this document, contact: Superintendent, Delaware Water Gap National Recreation Area, 1 River Road, Bushkill, PA 18324, 570–588–2418.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324

Warren County Library, Belvidere NJ, 07823

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802

Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, D.C. 20515

Honorable Don Sherwood, U.S. House of Representatives, Washington, DC, 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

Kemp Library, East Stroudsburg University, E Stroudsburg, PA 18301

State Library of PA, P.O. Box 1601, Harrisburg, PA 17105

Easton Area Public Library, 6th and Church Street, Easton, PA 18042

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg PA 18360

Pike County Library, 201 Broad Street, Milford PA 18337

Dated: June 15, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–16581 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area; Notice; Correction

SUMMARY: The Delaware Water Gap National Recreation Area submitted a Notice of Availability for its Trail Plan/ General Management Plan Amendment/ Environmental Impact Statement. The document contained an incorrect date for the start of the public comment period.

FOR FURTHER INFORMATION CONTACT: Chris Nelson, 570–588–2418.

Correction

In a **Federal Register** publication request letter published June 23, 1999 (64 FR 33501), Summary section, correct date to read:

The document will be available for a 45-day public review beginning on July 9, 1999.

Dated: June 29, 1999.

J. Robert Kirby,

Acting Superintendent.

[FR Doc. 99–17652 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Pea Ridge National Military Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Pea Ridge National Military Park, Arkansas.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Pea Ridge National Military Park, Arkansas, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters should be directed to: Mr. Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, Arkansas 72751; E-mail: steve__adams@nps.gov. Requests to be added to the project mailing list can be made to Jennie Wagner at the above address or telephone 501–451–8122, extension 103.

FOR FURTHER INFORMATION CONTACT: Superintendent, Pea Ridge National Military Park, at the address above or at telephone 501–451–8122, extension 104.

SUPPLEMENTARY INFORMATION: Pea Ridge National Military Park is a 4,300 acre Civil War Battlefield that preserves the site of March 1862 battle that saved Missouri for the Union. The Battle of Pea Ridge, March 7th and 8th, 1862 was the successful culmination of a Union campaign to foil the Confederacy's goal of securing Missouri and capturing the Federal arsenal at St. Louis. The victory at Pea Ridge allowed the Union to continue control of Missouri and the Missouri and Mississippi Rivers, thus assisting the strategic and logistical base for General Grant's Mississippi campaign.

In accordance with NPS Park Planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. § 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public by the autumn of 2000.

Dated: June 30, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–17522 Filed 7–9–99; 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 July 3, 1999. 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 27, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Clarke County

Bush House (Clarke County MPS), 168 N. Church St., Grove Hill, 99000885
Cleveland, Stephen Beech, House (Clarke County MPS), Cty Rd. 35, 2.4 mi. S of US 84, Suggsville vicinity, 99000886
Coate, John A., House (Clarke County MPS), DuBose St., bet. Church and Crawford Sts., Grove Hill, 99000887
Cobb House (Clarke County MPS), US 84, 1.4 mi. W of US 43, Grove Hill vicinity, 99000888
Gainestown Methodist Church and Cemetery (Clarke County MPS), Cty. Rd. 29, 0.3 mi. S of Cty. Rd. 33, Gainestown vicinity, 99000889
Pugh, Jesse Pickens, Farmstead (Clarke County MPS), US 84, 3.5 mi. W of Grove Hill, Grove Hill vicinity, 99000890

Dallas County

Street Manual Training School, 263 Cty. Rd. 38, Ruchmond-Minter vicinity, 99000891

Elmore County

East Wetumpka Commercial Historic District (Boundary Increase), 206 S. East Main St., Wetumpka, 99000884

ARKANSAS

Washington County

Fayetteville National Cemetery (Civil War Era National Cemeteries MPS), 700 Government Ave., Fayetteville, 99000892

CALIFORNIA

Alameda County

American Bag Co.—Union Hide Co., 299 Third St., Oakland, 99000896

Los Angeles County

Scripps Hall, 209 E. Mariposa St., Altadena, 99000893

Riverside County

Childs, William, House, 1151 Monte Vista Dr., Riverside, 99000895

San Francisco County

Second and Howard Streets District, 121–198 2nd, 579–612 Howard, 116 Natoma, 111–163 New Montgomery, San Francisco, 99000894

COLORADO

Crowley County

Crowley School, 301 Main St., Crowley, 99000897

FLORIDA

Palm Beach County

Central Park Historic District, Roughly along FL 805 and S. Olive Ave. from Monroe Dr. to Southern Blvd., West Palm Beach, 99000898

GEORGIA

Marion County

Drane—Stevens House, Church St. bet. Fourth and Fifth Ave., Buena Vista, 99000899

KENTUCKY

Fayette County

Bowman Mill Road Rural Historic District, Bowman Mill Rd., Parkers Mill Rd., and Cave Hill Ln.,

Taylor County

Battle of Tebbs Bend, Off KY 55, Tebbs Bend Rd., Campbellsville vicinity, 99000900

MISSOURI

Knox County

Edina Double Square Historic District, Roughly along portions of Main and E. Lafayette Sts., Edina, 99000902

McDonald County

Pineville Site, Address Restricted, Pineville vicinity, 99000903

NEW JERSEY

Atlantic County

Babcock, Capt. Francis, House, 324 S. Shore Rd., Absecon City, 99000907

Cape May County

Hildreth, George, House, 731 Seashore Rd., Lower Township, 99000905

Monmouth County

North Long Branch School—Primary No. 3, 469 Church St., Long Branch, 99000906

Morris County

Lake Hopatcong Yacht Club, N. Bertrand Rd. and Willow St., Mount Arlington Borough, 99000904

NEW YORK

Clinton County

Miller Homestead, 664 Hallock Hill Rd., AuSable, 99000910

Delaware County

Second Old School Baptist Church of Roxbury, Cty. Rd. 41, Roxbury, 99000908

Ulster County

Brunel, Emile, Studio and Sculpture Garden, NY 28, Boiceville, 99000909

NORTH CAROLINA

Bladen County

Gilmore—Patterson Farm, 20337 NC 87 W, St. Paul's vicinity, 99000912

Buncombe County

Spinning Wheel, 1096 Hendersonville Rd., Asheville, 99000913

Currituck County

Currituck Beach Lighthouse Complex (Boundary Increase), NC 12, N of NC 1185, Corolla, 99000911

OHIO

Warren County

Springboro Historic District, Roughly bounded by Main, East, and Mill Sts., and Central Ave., Springboro, 99000914

WASHINGTON

Douglas County

Nifty Theater (Movie Theaters in Washington State MPS) 201 Locust, Waterville, 99000916

King County

Entwistles, David and Martha, House, 32021 E. Entwistle St., Carnation, 99000918, Independent Order of Odd Fellows (IOOF) Hall No. 148, 3940 Tolt Ave., Carnation, 99000917

Pierce County

Annobee Apartments, 319–323 North I St., Tacoma, 99000919

Spokane County

Koerner House, 1824 S. Mount St., Spokane, 99000915

WISCONSIN

Green Lake County

Thrasher's Opera House, 506 Mill St., Green Lake, 99000921

Sauk County

Sauk City Fire Station, 717 John Adams St., Sauk City, 99000920

[FR Doc. 99–17660 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History of New York, NY

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History which meets the definition of ''object of cultural patrimony'' under Section 2 of the Act.

The cultural item is a wooden canoe prow piece carved in the shape of a beaver. It is painted red with black and blue-green detailing and it has abalone teeth and eyes. Representatives of Kootznoowoo, Incorporated, identified this prow piece as belonging to the one canoe that survived the U.S. Navy's shelling of Angoon in 1882.

In 1911, the American Museum of Natural History purchased this prow piece from George Thornton Emmons. The Museum accessioned the item into its collection the same year (AMNH Accession Number 1911-7).

The cultural affiliation of this item is Hutsnuwu (''Hootz-ah-tar'') Tlingit as indicated through Museum records and consultation with representatives of Kootznoowoo, Incorporated. Kootznoowoo, Incorporated, had requested the object on behalf of the Deisheetaan Clan. Consultation evidence presented by representatives of Kootznoowoo, Incorporated, indicates that this item has ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had the right to alienate it at the time of acquisition.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and Kootznoowoo, Incorporated.

This notice has been sent to officials of Kootznoowoo, Incorporated, and the Angoon Community Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar for Cultural Resources, Department of Anthropology, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before August 11, 1999. Repatriation of this object to Kootznoowoo, Incorporated, may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice.

Dated: July 2, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–17659 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation; Redwood National Park, Del Norte County, California

AGENCY: Redwood National Park, NPS, DOI.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that Redwood National Park has prepared an environmental assessment on an application made by Cal North Cellular to upgrade its existing wireless telecommunication facility at the Requa maintenance area.

EFFECTIVE DATE: Comments on the environmental assessment will be accepted on or before August 6, 1999.

ADDRESSES: Interested parties should contact National Park Service, Superintendent's Office, Redwood National Park, 1111 Second Street, Crescent City, CA 95531. To obtain a copy of the environmental assessment, contact Kelly Cahill at (707) 464–6101 extension 5002.

SUPPLEMENTARY NOTICE: The initial application made by Cal North Cellular requests that a cellular site be upgraded in the national park's maintenance area at Requa. The Superintendent will consider and evaluate all comments received on the environmental assessment before authorizing Cal North Cellular to proceed with the permitting process.

Dated: June 29, 1999.

Andrew T. Ringgold,

Superintendent, Redwood National Park.

[FR Doc. 99–17524 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–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 August 11, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, 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 30, 1999 (64 FR 23361). 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: Returned Request Form, Reply to Request Involving Relief Agencies, Walk-In Request for OPM Records or Information.

OMB number: 3095-New.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 4,500.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from civilian personnel or medical records.

Estimated total annual burden hours: 375 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. The authority for this information collection is contained in 36 CFR 1228.162. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF's or EMF's, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

Dated: July 6, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–17603 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 26, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This

approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Intelligence Agency (N1–373–99–2, 1 item, 1 temporary item). Records relating to the planning and development of an automated resource management information system that was never operational. Included are such records as feasibility studies, plans, manuals, and budget documents.

2. Department of Defense, Office of the Inspector General (N1–509–99–3, 3 items, 3 temporary items). Surveys, working papers, recommendations, charts, and related records pertaining to staffing. Included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–8, 3 items, 2 temporary items). Electronic copies of records created using electronic mail, word processing, and other office automation applications that pertain to budget policy, budget estimates, budget justifications, and related matters. Also included are recordkeeping copies of budget office records that pertain to non-substantive programs. Recordkeeping copies of files that relate to substantive programs are proposed for permanent retention.

4. Department of Energy, Strategic Petroleum Reserve (N1–434–98–3, 36 items, 21 temporary items). Records relating to administrative and operational activities of the Strategic Petroleum Reserve (SPR). Included are such records as general subject files, organization improvement files, external relations records, files on environmental matters, safety and health records, legislative files, and maintenance management files. Files proposed for permanent retention include program planning files, construction and engineering records, external agreements, oil acquisition/drawdown records, economic analysis files, organization and management files, SPR publications, maps, photographs, and drawings.

5. Central Intelligence Agency, Agency-wide (N1–263–99–2, 2 items, 2 temporary items). Electronic system and related paper input documents containing financial information on individual personnel collected pursuant to the Counterintelligence and Security Enhancements Act of 1994 and Executive Order 12968 (Access to Classified Information).

6. Central Intelligence Agency, Agency-wide (N1–263–99–3, 2 items, 1 temporary item). Office automation copies of schedules of daily activities. Recordkeeping copies of schedules of daily activities for all Presidential appointees and deputy directors are proposed for permanent retention.

7. Environmental Protection Agency, Agency-wide (N1–412–98–2, 2 items, 2 temporary items). Records relating to EPA participation in safety tests and disaster preparedness exercises. Included are correspondence files, state and local emergency response plans, inspection reports, and electronic copies of documents created using electronic mail and word processing.

8. Federal Energy Regulatory Commission, Financial Policy Division (N1–138–99–1, 8 items, 8 temporary items). Records relating to delegations of administrative authorities, including an electronic database which identifies individuals to whom administrative authorities have been delegated. Electronic copies of documents created using electronic mail and word processing are also included.

9. Federal Retirement Thrift Investment Board, Agency-wide (N1–474–98–1, 6 items, 6 temporary items). Federal Retirement Thrift Investment Board and Thrift Savings Plan web sites and related records. Included web site archives, change control records including e-mail and word processing applications, migration records, feedback and statistical reports, and electronic code.

10. Federal Trade Commission, Agency-wide (N1–122–96–2, 4 items, 3 temporary items). Congressional correspondence records consisting of routine inquiries from Members of Congress, responses, tracking sheets, data about correspondence maintained on-line, and printed out reports derived from on-line data. Substantive correspondence with Congressional Committees and Subcommittees, signed by the Chairman of the Commission or by the Commission's Secretary on behalf of the Commission, is proposed for permanent retention.

11. Nuclear Regulatory Commission, Office of Congressional Affairs (N1–431–99–2, 35 items, 31 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) pertaining to Congressional affairs, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Records, which were previously approved for disposal in paper form, include files relating to committees and conferences for which the Commission was not a sponsor, Congressional correspondence, Congressional hearing testimony and transcripts, copies of proposed legislation, and biographical information on Members of Congress. The electronic recordkeeping copies of files relating to committees and conferences sponsored by the Commission and general program correspondence files at the Office Director level are proposed for permanent retention.

12. Nuclear Regulatory Commission, Office of Small Business and Civil Rights (N1–431–99–5, 4 items, 2 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) pertaining to small business and civil rights, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of program correspondence files at the Office Director level are proposed for permanent retention.

13. Social Security Administration, Agency-wide (N1–47–99–1, 4 items, 4 temporary items). Title II Retirement and Survivors Insurance International Claims Folders consisting of paper case files and electronic copies of records created using word processing, electronic mail, and other office automation applications. These files are used to adjudicate claims and include such records as award or disallowance determination forms, correspondence, claims payment history, and, for disability-based benefits, medical

reports and disability hearing transcripts.

Dated: July 6, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–17600 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice; Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, has also concurred with the renewal of the Advisory Committee on Preservation in correspondence dated June 14, 1999.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 6, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–17602 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in Federal Register notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 26, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for addi-tional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, LifeCycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing

documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedule Pending

Farm Credit Administration, Agency-wide (N9–103–99–1, 28 items, 28 temporary items). Electronic copies of records created using electronic mail and word processing accumulated by the Office of the Board, the Office of Examination, the Office of General Counsel, and the Office of Resources Management as well as electronic copies relating to routine program administration accumulated by all agency components. Included are electronic copies associated with such records as rulemaking files, funding approvals, examination reference files, litigation and enforcement cases, published periodicals and studies, training materials, and criminal referrals. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Chapters 1, 2, 4, 5, 6, 8, and 9 of the FCA Comprehensive Records Schedule and Disposition Information manual and Disposition Jobs N1–103–87–3, N1–103–92–2, N1–103–94–8, and N1–103–96–1. The January 1995 version of the manual is available on the NARA web site (http://ardor.nara.gov/agricult/fca/index.html).

Dated: July 6, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–17601 Filed 7–9–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 137th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 22, 1999 from 2:30 to 5:30 p.m. in Room 527 and on July 23, 1999 from 9 a.m. to 3:30 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The Council will meet in closed session on July 22, from 2:30 to 5:30 p.m. for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of May 12, 1999, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code. The remainder of the meeting, from 9 a.m. to 3:30 p.m. on July 23, will be open to the public. Topics for discussion tentatively include: A report and discussion of issues emerging from the Planning & Stabilization Colloquia; a Research presentation on the Role of Research in Agency Planning and Demographics; a report on Millennium projects; Application Review; Challenge America 2000 and ArtsREACH 2000 Guidelines; a Design Initiative—New Public Works; the new Endowment logo for television use; Congressional and Budget updates; and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/692–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: July 6, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 99–17510 Filed 7–9–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 26, ''Fitness for Duty Program''.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

6. *An estimate of the number of responses:*

a. 144 semi-annual reports (an average of 40 hours per response).

b. 72 telephonic event reports (an average of 15 minutes per response).

c. 44,000 written statements from applicants for unescorted access authorization to protected areas (an average of 30 seconds per response).

7. *The estimated number of annual respondents:* 72.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 61,574.6 (6097 hours of reporting burden and 55,477.6 hours of recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 26, ''Fitness for Duty Program,'' requires licensees of nuclear power plants and licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events and program performance. Compliance with these program requirements is mandatory for licensees subject to 10 CFR Part 26.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 11, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0146), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of July 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–17616 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear, Inc., (the licensee) for operation of the Three Mile Island Nuclear Station, Unit 1, (TMI–1) located in Dauphin County, Pennsylvania.

The proposed amendment would grant authority for the licensee to possess radioactive materials without unit distinction so that after the sale and transfer of the TMI–1 license to AmerGen, radioactive materials may continue to be moved between the TMI–1 and TMI–2 units as they currently are. After the license transfer, GPU Nuclear will need to access the waste handling and processing facilities at TMI–1 (currently common facilities) for its normal post defueling monitored storage (PDMS) activities. Similarly, AmerGen as the TMI–1 licensee and PDMS contractor, will need to move radioactive apparatus and materials between units. The amendment would not authorize receipt or possession of radioactive material or waste from other sites.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or the consequences of an accident previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action statement or Surveillance Requirement is affected by any of the proposed changes. Examples of TMI–2 radioactive materials which are moved or staged in TMI–1, such as liquid or solid radwaste or contaminated protective clothing, provide negligible source terms for any potential release. Further, the proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the

probability or consequences of any accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analyses assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publication Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no

significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 29, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Law/Government Publication Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 6th day of July 1999.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17614 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would change the Technical Specifications (T/S) to allow reactor coolant system temperature changes in certain Mode 5 and 6 action statements if the shutdown margin is sufficient to accommodate the expected temperature change. In addition, footnotes regarding additions of water from the refueling water storage tank to the reactor coolant system are clarified and relocated to action statements. Additional actions are added in Table 3.3–1, ''Reactor Trip System Instrumentation,'' when the required source range neutron flux channel is inoperable. Corresponding changes are proposed for the bases for T/S 3/4.1.1, ''Boration Control,'' and T/S 3/4.1.2, ''Boration Systems.'' Administrative changes are proposed to improve clarity. Finally, additions are made to shutdown margin T/S surveillance requirements to address use of a boron penalty (requirement for additional boron) during residual heat removal system operation in Modes 4 and 5.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No. I&M [IM] [Indiana Michigan Power Company] proposes to permit operators to make RCS [reactor coolant system] temperature changes under conditions not previously allowed. RCS temperature changes may add positive reactivity to the reactor core that could reduce the SDM [shutdown margin] necessary to maintain subcritical conditions. Acceptable consequences for an inadvertent criticality rely on prevention. Maintaining an adequate SDM is an essential means to prevent an inadvertent criticality.

When equipment that is relied upon to prevent, detect, correct, or mitigate an unintentional approach to a critical condition is unavailable or degraded, activities that may reduce the SDM must be precluded or adequately controlled. This amendment request is based on maintaining adequate control of positive reactivity additions as a result of RCS temperature changes in Modes 5 and 6. The control is provided by requirements to confirm that the SDM required by the T/S is available to accommodate the expected RCS temperature change. This preserves the validity of accident analyses that assume the T/S SDM requirements are met when the accident is initiated.

The following accidents of potential applicability in Modes 5 and 6 are described in Section 14.2, ''Standby Safeguards Analysis'' of the Updated Final Safety Analysis Report (UFSAR).

1. Fuel handling accident
2. Waste liquid release
3. Waste gas release
4. Steam generator tube rupture
5. Steam pipe rupture
6. Rupture of control rod mechanism housing—rod cluster control assembly (RCCA) ejection
7. Environmental consequences following secondary system accidents
8. Rupture of a feedline (Unit 2 only)

The UFSAR also describes these events:

9. Uncontrolled RCCA withdrawal from a subcritical condition (Section 14.1.1)
10. Uncontrolled boron dilution (Section 14.1.5)

Accidents 4 through 8, above, are not credible in Modes 5 and 6 due to negligible stored energy (temperature and pressure) in the primary and secondary systems below the Mode 5 RCS temperature limit of 200°F. Therefore, they are not analyzed in Mode 5 and 6 and are not considered further.

Remaining accidents 1, 2, 3, 9, and 10 are discussed below:

1. Fuel Handling Accident

The only time a fuel handling accident could occur is during the handling of a fuel assembly. The required action to suspend core alterations is not changed. Changing RCS temperature in Modes 5 and 6 would not initiate this accident. SDM is not a factor or

initial condition assumed in the analysis of a fuel handling accident. Therefore, since the requirements that would preclude this accident are not affected, the probability of the accident is not changed. Similarly, a potential reduction in SDM does not increase the consequences of this accident.

2. Waste Liquid Release

The inadvertent release of radioactive liquid wastes to the environment was evaluated for the waste evaporator condensate and monitor tanks, condensate storage tank, primary water storage tank, RWST [refueling water storage tank], auxiliary building storage tanks, and chemical and volume control system (CVCS) holdup tanks. It was concluded in the Updated Final Safety Analysis Report Chapter 14 evaluation that loss of liquid from these tanks to the environment is not a credible accident. This conclusion is not impacted by the thermal effects or reactivity changes due to RCS temperature while in Modes 5 and 6.

3. Waste Gas Release

Radioactive gases would be introduced into the RCS by the escape of fission products if defects existed in the fuel cladding. The processing of the reactor coolant by auxiliary systems results in the accumulation of radioactive gases in various tanks. The two main sources of any significant gaseous radioactivity that could occur would be the volume control tank and the gas decay tanks. It is assumed that a tank ruptures by an unspecified mechanism after the reactor has been operating for one core cycle with 1% defects in the fuel cladding. The integrity of these tanks is not affected by changes in RCS temperature and SDM is not a factor in the consequences of these events. Therefore, it is concluded that the probability of occurrence of a tank rupture and the consequences of a tank rupture are not significantly increased by this change.

9. Uncontrolled RCCA Withdrawal From a Subcritical Condition

The proposed changes specifically permit positive reactivity additions due to temperature changes. However, all other positive reactivity changes are suspended when the action applies. Therefore, intentional rod withdrawal would not be permitted.

Additionally, this event could occur only when the reactor trip breakers are closed and the control rod drive mechanisms are energized. With the exception of testing or special maintenance, the rod drive motor generator set remains tagged out (de-energized with administrative cards to alert operators) in Modes 4 and 5. This alone would preclude rod movement. If the physical conditions for rod withdrawal were intentionally met, T/S require that two source range neutron flux instruments, two reactor trip instrumentation channels, and associated reactor trip breakers must be operable to automatically terminate the event. RCS temperature changes in Mode 5 and 6 are sufficiently below the normal operating and designed temperature of the drive mechanisms. The thermal effects of the proposed RCS temperature changes are not a significant contributor to the possibility of a drive mechanism failure. Acceptable consequences for the rod withdrawal event rely on termination by an automatic reactor trip prior to criticality, and no assumptions are made in the analysis about the SDM existing at the start of rod withdrawal. Therefore, it is concluded that this proposed license amendment would have no impact on the probability or consequences of an uncontrolled rod withdrawal event.

10. Uncontrolled Boron Dilution

Uncontrolled boron dilution is analyzed for refueling, startup, and power operation described in UFSAR section 14.1.5 for Unit 1 and Unit 2. The source of water for this event is primary grade water from the reactor makeup portion of the CVCS. The CVCS is designed to limit, even under various postulated failure modes, the potential rate of dilution to a value that provides the operator sufficient time to correct the situation in a safe and orderly manner. Acceptable consequences for this event rely on preventing an uncontrolled dilution.

The proposed change to allow RCS temperature changes below 200°F do not involve changes to the operating methods for the CVCS or modifications to the CVCS. Additionally, the CVCS pumps and valves required to add water to the RCS are not affected by the RCS temperature changes themselves. Any such effects in the range of 68°F to 200°F that would be permitted would be small compared to changes between 200°F to normal RCS operating temperature. Therefore, the thermal effects are significantly less than those that occur during normal operation. It is concluded that the probability and consequences of an uncontrolled boron dilution event are not significantly increased by the proposed license amendment.

The initiators and precursors for the accidents described above are not changed. Therefore, the probability of their occurrence is not changed and the consequences are bounded by the current analyses. Therefore, there is no increase in the types or amounts of effluents released offsite.

The proposed additions to action 5 of T/S Table 3.3–1 are conservative. They provide additional assurance that instrumentation would be available to alert operators to a dilution event. The requirement to isolate sources of dilution water removes potential initiators for an inadvertent dilution. The RWST would be considered a dilution source if the RWST boron concentration is less than the RCS boron concentration and less than the minimum boron concentration in T/S limiting condition for operation 3.1.2.7.b.2. Isolating the RWST in this case is appropriate because it eliminates a potential accident initiator. The borated water concentration and volume in Mode 5 are established to provide the required SDM after xenon decay and cooldown from 200°F to 140°F. The accidents described above do not require a minimum volume for reasons other than boration control.

The addition to T/S SRs 4.1.1.1.e and 4.1.1.2.b, which requires application of a boron penalty, is an additional restriction that is imposed administratively already. The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning. They do not affect accident initiators or precursors.

In summary, based on the above, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes permit RCS temperature changes under conditions that were previously prohibited. However, no new methods of changing RCS temperature are involved, and the T/S limits on the permissible rates of RCS temperature changes are not altered. Therefore, the integrity of the reactor vessel when subject to RCS temperature changes is not affected.

The accident of concern for the proposed amendment is an unintentional reduction in SDM leading to an inadvertent criticality. This is not a new or different kind of accident, although the causal mechanism adding the positive reactivity is an RCS temperature change instead of a dilution event.

As discussed in question 1, the requirement to maintain SDM during RCS temperature changes provides assurance that the probability of the SDM reduction is not increased. However, as an additional conservative measure, a maximum RCS heatup and cooldown rate of 50°F in any one-hour period is imposed when the action applies. This increases the time necessary for a RCS temperature change to reduce the SDM by an unacceptable amount. Thus, if a heatup or cooldown was initiated at 50°F/hr, and inadvertently continued beyond the intended temperature, sufficient time would be available for the operators to detect the SDM reduction with the source range nuclear instruments and secure the temperature change. The rate of 50°F in any one-hour period was estimated to provide at least as much time as was considered adequate for detecting and correcting a dilution event. The acceptable time for a dilution event is described in UFSAR Section 14.1.5. Conservative assumptions of the maximum positive or negative moderator temperature coefficient were used for the estimate.

It should be noted that compliance with the current T/S action statements prohibit deliberate heatup and cooldown. However, it does not prevent use of the equipment involved in removing decay heat to maintain plant temperature (for example residual heat removal system pumps, valves, and heat exchangers). Therefore, the probability of a malfunction of this equipment during deliberate heatup and cooldown is not significantly greater than it is when the equipment is operated, as necessary, to maintain steady-state temperatures for decay heat removal.

The addition to T/S SRs 4.1.1.1.e and 4.1.1.2.b, which requires application of a boron penalty, is an additional restriction that is imposed administratively already. The proposed additions to the T/S action statements for the source range neutron flux instrumentation provide additional controls to prevent an unmonitored positive reactivity

addition. The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning.

Isolating the RWST when it is a potential dilution source and when there are no source range neutron flux instrument channels operable in Mode 5 is not an accident initiator. Borated makeup to the RCS can be accomplished with the boric acid storage tank.

Based on the above, it is concluded that the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The margin of safety pertinent to the proposed changes is the T/S-required SDM. The additions to T/S SRs 4.1.1.1.e and 4.1.1.2.b require application of a boron penalty. Because this penalty is controlled administratively already and there are no other changes to the SDM requirements, the margin of safety is maintained. Additionally, the proposed change to isolate the RWST when it is a potential dilution source does not impact the ability of the boric acid storage tank to supply the boron required for SDM during cooldown from 200°F to 140°F including xenon decay.

The minimum time available to the operators to detect and terminate an unintentional addition of positive reactivity could also be considered a margin of safety. The proposed changes limit temperature changes to 50°F in a one-hour period so as not to reduce this time. Compliance with the proposed changes would continue to provide assurance that there is no significant reduction in these margins of safety.

The remaining changes are administrative. They correct typographical errors or change format, and are not intended to change the meaning.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 6th day of July 1999.

For the Nuclear Regulatory Commission.

John F. Stang, Sr.,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–17615 Filed 7–9–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), the Securities and Exchange Commission (Commission) is publishing for public comment the following summary of previously approved information collection requirements. The Commission plans to submit these existing collections of information to the Office of Management and Budget (OMB) for extension and approval.

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act of 1940 (the Act) authorizes the Commission to adopt rules that protect investment companies and their security holders from overreaching by affiliated persons where the investment company and the affiliated person participate jointly or jointly and severally in a transaction. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits any such participation, unless an application regarding the transaction has been filed with and approved by the Commission. The rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (investments) made by a affiliated bank and a small business investment company (SBIC), provided that reports about the investments are made on such forms as the Commission may prescribe. For this purpose, Rule 17d–2 [17 CFR 270.17d–2] prescribes Form N–17D–1.

Form N–17D–1 is used by SBICs and their affiliated banks to report any investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have a high potential for overreaching at the expense of shareholders.

Form N–17D–1 requires SBICs to report identifying information about the small business concern and the affiliated bank. On the form, SBICs must state, among other things, the outstanding investments in the small business concern, the use of the proceeds of the investment made during the reporting period, any changes in the nature and amount of the bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of such person) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration received or to be received by the affiliate.

The Commission estimates that up to 5 SBICs may use the form annually. The estimated burden of filling out the form is approximately 5 hours per response and would likely be completed by an accountant or other professional. At $114 per hour of time, completion of the form will cost approximately $570 per filer. The total annual burden would be 25 hours with a total annual cost of $2,850.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens 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.

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: July 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17622 Filed 7–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–0475

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 collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange to market the relevant order ticket either ''long'' or ''short.''

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on or admitted to unlisted trading privileges on, a national securities exchange. In addition, each respondent makes an estimated 60,933 annual responses, for an aggregate total of 91,400,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 12,705 burden hours.

Written comments are invited on: (a) whether the existing collection of information is necessary for the proper performance of the functions of the agency, including whether the information continues to have practical utility; (b) the accuracy of the agency's estimate of the burden of the existing collection of information; (c) ways to enhance the quality, utility, and clarity of the information being 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.

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 30, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17623 Filed 7–9–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 3088]

Shipping Coordinating Committee, Working Group for the Facilitation of International Maritime Traffic; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on Wednesday, August 18, 1999, in room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 27th session of the Facilitation Committee of the International Maritime Organization (IMO), which is scheduled for 6–10 September, 1999, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

—Convention on Facilitation of International Maritime Traffic
—Consideration and Adoption of Proposed Amendments to the Annex to the Convention
—EDI Messages for the Clearance of Ships
—Application of the Committee's Guidelines
—General Review of the Convention
—Formalities Connected with the Arrival, Stay and Departure of Ships
—Formalities Related to Cargo—Facilitation Aspects of the Multimodal Transport of Dangerous Goods
—Formalities Connected with the Arrival, Stay and Departure of Persons—Stowaways
—Facilitation Aspects of Other IMO Forms and Certificates-Harmonized Reporting Format
—Ship-Port Interface
—Technical Co-Operation Sub-Programme for Facilitation

Members of the public may attend this meeting up to the seating capacity of the room.

Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G–MSR), Room 1400, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: July 6, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–17618 Filed 7–9–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 2, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5897
Date Filed: June 28, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–SEA 0077 dated May 28, 1999—Issuance
Mail Vote 007—Special Passenger Amending Resolution 010n from Europe to South East Asia
PTC23 EUR–SEA 0078 dated 22 June 1999—Adoption
Intended effective date: 1 September 1999

Docket Number: OST–99–5901
Date Filed: June 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0067 dated 29 June 1999

Mail Vote 015—Resolution 010s TC23 Middle East-TC3
Special Passenger Amending Resolution from Korea to Middle East
Intended effective date: 15 July 1999

Docket Number: OST–99–5902
Date Filed: June 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA–EUR 0078 dated 29 June 1999
Mail Vote 016—Resolutions 002, 015n TC12 North Atlantic
USA-Austria, Belgium, Germany, Netherlands, Scandinavia, Switzerland
Intended effective date: 1 August 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–17611 Filed 7–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff (ANE–110), 12 New England Executive Park, Burlington, MA 01803; phone (781) 238–7111; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Task 17: Bird Ingestion

Review the comments received in response to NPRM 98–19 and recommend disposition of those comments. ARAC recommendations that do not support the proposals may include supporting data as appropriate.

The FAA expects ARAC to forward its recommendation to the FAA by November 30, 1999. The FAA will consider this recommendation in the development of the final rule.

Contrary to the usual practice, the FAA has not asked ARAC as part of this task to develop a final draft of the next action (i.e., supplemental notice, final rule, or withdrawal); rather, ARAC should provide a document setting forth the rationale for the recommended disposition of each of the comments.

Working Group Activity

The Engine Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Engine Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 28, 1999.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–17648 Filed 7–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 2, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of

Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 2, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29396
Petitioner: Department of the Air Force
Section of the FAR Affected: 14 CFR 91.209
Description of Relief Sought/ Disposition: To permit the USAF to conduct certain night flight military training operations without lighted external aircraft position and anticollision lights.

Docket No.: 29548
Petitioner: Continental Express
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought: To permit Continental Express to operate its Avions de Transport Regional ATR 42 and ATR 72 aircraft, Beechcraft 1900D aircraft, and Embraer EMB–120 and EMB 145 aircraft without installing, in each aircraft, the required, approved digital flight data recorder (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29556
Petitioner: Business Express Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought: To permit Business Express Airlines to operate its fleet of Saab 340A and 340B aircraft without installing, in each aircraft, the required, approved digital flight data recorder (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29574
Petitioner: Central Air Flight Training, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353
Description of Relief Sought: To permit Central Air Flight Training, Inc. to conduct sightseeing flights without establishing drug testing and alcohol misuse prevention programs

Docket No.: 29575
Petitioner: Air Wisconsin Airlines Corporation
Section of the FAR Affected: 14 CFR 121.344(b)(3)
Description of Relief Sought/ Disposition: To permit Air Wisconsin Airlines to operate certain British Aerospace 146 aircraft without installing, in each aircraft, the required, approved digital flight data recovered (DFDR) until the next heavy maintenance check after the aircraft manufacturers have made the DFDR modification kits available, but not later than August 20, 2001.

Docket No.: 29620
Petitioner: The Boeing Company
Section of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought/ Disposition: In lieu of a static proof pressure test on the 737–900, Boeing proposes to demonstrate compliance with § 25.1435(b)(1) by similarity to the 737–700 hydraulic system (compliance for which was established during certification of that aircraft) and by engineering design review of the added straight-line hydraulic tube installations on the 737–900.

Dispositions of Petitions

Docket No.: 22451
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.613, 121.619(a), and 121.625
Description of Relief Sought/ Disposition: To permit ATA-members airlines and other similarly situated part 121 operators to continue to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination airport, alternate airport, or both airports could be below authorized weather minimums when other time increments of the weather forecast state that weather conditions will be at or above the authorized weather minimums.
Grant, 06/18/99, Exemption No. 3585L

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Section of the FAR Affected: 14 CFR 103.1(a), and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To permit individuals authorized by EAA to give instruction in powered ultralights that a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.
Partial grant, 6/18/99, Exemption No. 3748I

Docket No.: 24427
Petitioner: United States Ultralight Association, Inc.
Section of the FAR Affected: 14 CFR 103.1(a), and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To allow individuals authorized by USUA to give instructions in powered ultralights that have maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have power-off staff speed that does not exceed 35 knots calibrated airspeed.
Grant, 6/18/99, Exemption No. 4274H

[FR Doc 99–17649 Filed 7–9–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33773]

Consolidated Rail Corporation—Trackage Rights Exemption—Grand Trunk Western Railroad Incorporated

Grand Trunk Western Railroad Incorporated (GTW), a subsidiary of Canadian National Railway Company (CN), has agreed to grant limited, non-exclusive overhead trackage rights to Consolidated Rail Corporation (Conrail)[1] over a 4.4-mile segment of GTW's Shoreline Subdivision between the proposed CN/Conrail connection at Milwaukee Junction, near milepost 54.6 and the existing connection with

[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of assets of Conrail was effected by CSX and NS on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/ Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999). Conrail continues to operate rail properties in Michigan, New Jersey, and Pennsylvania.

Norfolk Southern Railway Company (NSR) at West Detroit, MI, near milepost 50.2, on CN's Shoreline Subdivision.[2]

The transaction was expected to be consummated on or after July 1, 1999, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow Conrail to improve service to customers by reducing congestion and delay in the West Detroit, Delray and Ecorse Junction, MI areas.

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 the notice 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. 33773, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John J. Paylor, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 2, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–17635 Filed 7–9–99; 8:45 am]

BILLING CODE 4915–00–P

[2] A redacted version of the Trackage Rights Agreement between GTW and Conrail was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal along with a motion for a protective order. The motion will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 6, 1999.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 99–17604 Filed 7–9–99; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Pharaohs of the Sun: Akhenaten, Nefertiti, Tutankhamen''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, 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, ''Pharaohs of the sun: Akhenaten, Nefertiti, Tutankhamen,'' 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 exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about November 14, 1999 to on or about February 6, 2000; the Los Angeles County Museum of Art, Los Angeles, CA, from on or about March 12, 2000 to on or about May 20, 2000; and the Art Institute of Chicago, Chicago, IL, from on or about July 1, 2000 to on or about September 24, 2000, is in the Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul Manning, Assistant General Counsel, Office of the General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 6, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–17560 Filed 7–9–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 132

Monday, July 12, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVRIONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL-6320-8]

RIN 2060–AG46

Acid Rain Program; Continuous Emission Monitoring Rule Revisions

Correction

In rule document 99–8939 beginning on page 28564 in the issue of Wednesday, May 26, 1999, make the following correction(s):

§ 75.19 [Corrected]

1. On page 28592, in the third column, in §75.19(c)(4)(ii)(A), under ''Where:'', ''EFNNO$_X$'' should read ''EFNO$_X$''

§ 75.57 [Corrected]

2. On page 28610, in the second column, § 75.57(c)(4)(iv), in table 4A., in entry 4., ''NSO$_2$'' should read ''SO$_2$''.

Appendix A to Part 75 [Corrected]

3. On page 28637, in the second column, in appendix A, in section 3.1(b), in the 11th and 12th lines, ''|R–A–'' and in the 19th line, ''–R–A|'' should read ''|R–A|''.

4. On page 28643, in the first column, in appendix A, in section 7.6.5(b), in the 14th and 15th lines, ''±'' should read ''≤''.

5. On page 28645, in the first column, in appendix A, in section 1.2.4, in the 5th line, ''SO$_X$ or NO$_2$'' should read ''SO$_2$ or NO$_X$''.

Appendix B to Part 75 [Corrected]

6. On page 28652, in the table, Figure 2 to Appendix B of part 75, in the second column, in the fifth line, ''1.5% H$_2$O$_2$'' should read ''1.5% H$_2$O^2''.

7. On the same page, in the same table, in the footnote 3, ''NO$_2$'' should read ''NO$_X$''.

Appendix D to Part 75 [Corrected]

8. On page 28654, in the second column, in appendix D, in section 2.1.5.2, paragraph designation ''(4)'' should read ''(b)''.

9. On page 28661, in the second column, in appendix D, in section 2.3.2.1.2(d), in the fourth line, paragraph designation ''(5)'' should read ''(e)''.

Appendix E to Part 75 [Corrected]

10. On page 28667, in the third column, in appendix E, in section 4.3, for ''(Eq. F-13)'', under ''Where:'', in the first line, ''mass emission,'' should read ''mass emissions, tons.''.

Appendix B to Part 75 [Corrected]

11. On page 28651, the table ''Figure 1 to Appendix B to Part 75–Quality Assurance Text Requirements'' is corrected and set out in its entirety below:

FIGURE 1 TO APPENDIX B OF PART 75—Quality Assurance Test Requirements.

Test	QA test frequency requirements		
	Daily*	Quarterly*	Semiannual*
Calibration Error (2 pt.)	✔		
Interference (flow)	✔		
Flow-to-Load Ratio		✔	
Leak Check (DP flow monitors)		✔	
Linearity (3 pt.)		✔	
RATA (SO_2, NO_X, CO_2, H_2O)[1]			✔
RATA (flow)[1,2]			✔

*For monitors on bypass stack/duct, ''daily'' means bypass operating days, only. ''Quarterly'' means once every QA operating quarter. ''Semiannual'' means once every two QA operating quarters.

[1] Conduct RATA annually (i.e., once every four QA operating quarters), if monitor meets accuracy requirements to qualify for less frequent testing.

[2] For flow monitors installed on peaking units and bypass stacks, conduct all RATAs at a single, normal load. For other flow monitors, conduct annual RATAs at the two load levels used most frequently since the last annual RATA. Alternating single-load and 2-load RATAs may be done if a monitor is on a semiannual frequency. A single-load RATA may be done in lieu of a 2-load RATA if, since the last annual flow RATA, the unit has operated at one load level for ≥85.0 percent of the time. A 3-load RATA is required at least once in every period of five consecutive calendar years and whenever a flow monitor is re-linearized.

[FR Doc. C9–8939 Filed 7–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

Correction

In notice document 99–16849, beginning on page 36035 in the issue of Friday, July 2, 1999, make the following correction:

On page 36038, in the second column, in the first full paragraph, in the sixth and seventh lines from the end, ''[thirty days after publication in the **Federal Register**]'' should read ''August 2, 1999''.

[FR Doc. C9–16849 Filed 7–9–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-99-009]

RIN 2115-AE46

Special Local Regulations: Fireworks Displays Within the First Coast Guard District

Correction

In rule document 99–16360 beginning on page 34543 in the issue of Monday, June 28, 1999, make the following corrections

§ 100.114 [Corrected]

1. On page 34545, in § 100.1149(a), in the '' Fireworks Display Table'', in the third column, in the 15th line, ''Harboreast'' should read ''Harborfest''.

2. On page 34546, in § 100.114(a), in the ''Fireworks Display Table'', in the first column, in the fourth line, add a colon after ''Massachusetts''.

3. On page 34546,in the same section, in the same table, in the second column, in the 10th line, ''July 3th'' should read ''July 3rd''.

4. On page 34546,in the same section, in the same table, in the same column, in the 11th line, ''July 3th'' should read ''July 3rd''.

5. On page 34549, in the ''Fireworks Display Table'', in the same section, under ''August'', in the third column, in the 23rd line from the bottom, ''(LLNR) 37955)'' should read ''(LLNR 37955)''.

[FR Doc. C9–16360 Filed 7–9–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday
July 12, 1999

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249

Broker-Dealer Registration and Reporting; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240 and 249

[Release No. 34–41594; File No. S7–16–99]

RIN 3235–AH73

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Form BD, the uniform broker-dealer registration form, and related rules under the Securities Exchange Act of 1934. The amendments modify the version of Form BD that was adopted in 1996 but never implemented. The primary purpose of the amendments is to support electronic filing in the new, Internet-based Central Registration Depository system. This computer system, which is operated by the National Association of Securities Dealers, Inc., maintains registration information regarding broker-dealers and their registered personnel. The changes adopted today direct how broker-dealers will make the transition to the new system, as well as how they will comply with their filing obligations on an ongoing basis.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel or Barbara A. Stettner, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (''Commission'') is adopting amendments to Form BD, the uniform application for broker-dealer registration, and related rules under the Securities Exchange Act of 1934 (''Exchange Act'').[1] The amendments modify the version of Form BD that was adopted in 1996 but never implemented (''1996 Form BD'').[2] As we described more fully in our release proposing amendments to Form BD and related rules (''Proposing Release''),[3] these amendments are mainly technical and formatting changes needed to accommodate ''Web CRD,'' the new, Internet-based Central Registration Depository (''CRD'') system.[4] Web CRD will replace the current CRD system (''Legacy CRD''), which was created in 1981 as a cooperative effort with the North American Securities Administrators Association (''NASAA''), in order to facilitate the ''one-stop'' filing process for broker-dealers and their associated persons.[5] Web CRD should help regulators to more efficiently gather the information needed to make informed registration and licensing decisions. It should also help regulators to process registration-related filings more efficiently and effectively and significantly enhance their ability to use the system for regulatory purposes. In addition, Web CRD should make it easier for registrants to comply with their filing obligations. Moreover, by utilizing the Internet, Web CRD is expected to streamline the procedures to process and respond to requests from the public for information about particular broker-dealers and their associated persons.

The 1996 Form BD amendments were based upon expected changes to the CRD that were being developed at that time. Because Web CRD differs significantly from the approach anticipated then, 1996 Form BD cannot be implemented without the changes we adopt today. Specifically, the amendments to Form BD are intended to elicit the same level of disclosure required by 1996 Form BD, but in a different format. Other changes to the form are intended to clarify the form's requirements, to update references, or to streamline the registration process. The amendments to Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 are necessary to implement Web CRD, both initially and on an ongoing basis. Web CRD is scheduled to be operational beginning August 16, 1999.

In the Proposing Release, we requested comment on the specific changes proposed for Form BD and whether those changes would provide more meaningful information to regulators without increasing the regulatory burden on broker-dealers. The Commission also requested comment on the rule changes needed to implement the new form. The Commission received three comment letters.[6] The commenters essentially supported the proposed amendments, as well as the shift to electronic filing that will be possible with Web CRD. However, the commenters also all raised issues concerning Web CRD's phase-in period, and particularly the Form BD re-filing requirement.[7] In response to these concerns, the staff of the Division of Market Regulation is expanding its no-action position discussed in the Proposing Release.[8] In addition, we are modifying the Temporary Filing Instructions proposed under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1.[9] With the exception of a few additional formatting changes and corrections, the amendments to the form itself are being adopted as proposed.

II. Amendments to Form BD

The amendments to 1996 Form BD adopted today will modify the form's general filing instructions and terms, its Disclosure Reporting Pages (''DRPs'') and Schedule E.[10] The amendments correct oversights, replace outdated information, and clarify instructions. They also replace Legacy CRD references with Web CRD references, establish certain information fields as

[1] 17 CFR 240.15b1–1; 17 CFR 249.501; 15 U.S.C. §§ 78a *et seq.*

[2] Securities Exchange Act Release No. 37431 (July 12, 1996); 61 FR 139 (July 18, 1996). 1996 Form BD was not implemented until today because of the shift from ''Redesigned CRD,'' a network-based system upon which 1996 Form BD was based, to Web CRD. *See* Proposing Release, part II. Background (discussing the rationale behind the shift from Redesigned CRD to Web CRD).

[3] Securities Exchange Act Release No. 41351 (April 29, 1999); 64 FR 25153 (May 10, 1999).

[4] The CRD is operated and maintained by the National Association of Securities Dealers, Inc. (''NASD'') and is used by the Commission, self-regulatory organizations (''SROs''), and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. For purposes of this release, the term ''NASD'' will be used to encompass both the NASD and NASD Regulation, Inc. (''NASDR'') unless specified otherwise. The NASDR is the regulatory subsidiary of the NASD and is responsible for the operation of the CRD system.

[5] Applicants seeking broker-dealer registration with the Commission, the NASD, the Chicago Board Options Exchange (''CBOE''), and the various states currently file a single Form BD with the NASD. The NASD manually enters the information into the CRD system, which then makes the information available (electronically) to the Commission and the appropriate states for review. Applicants may also seek registration with SROs other than the NASD and the CBOE through Form BD, but they may also be required to submit a copy of the paper Form BD to those SROs that do not participate in the CRD system. The NASD anticipates more SROs to become full participants in Web CRD after the system is operational.

[6] *See* Letters from Marie Montagnino, President, Association of Registration Management (''ARM'') (June 8, 1999); Michael B. Radest, Director, Credit Suisse First Boston (''CSFB'') (June 9, 1999); and Derek W. Linden, Senior Vice President, NASD (June 15, 1999). These letters are available for inspection and copying in File No. S7–16–99, located in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549.

[7] *See infra* text accompanying notes 39–44.

[8] *See* discussion *infra* part III.A.2.b.(i).

[9] *See* discussion *infra* part III.A.2.b.(ii).

[10] As explained below, the version of Form BD currently in use does not incorporate the DRPs or Schedule E that were adopted in 1996. To distinguish these documents from the ones currently in use, we will refer to the versions adopted in 1996 but never implemented as the ''1996 DRPs'' and ''1996 Schedule E,'' respectively.

''read-only,'' [11] and make conforming changes based on the reorganization of the NASD manual in 1996 [12] throughout Form BD. In addition, one change is intended to help eliminate incorrect succession filings by requiring broker-dealers to discuss these filings with CRD personnel prior to submission.[13]

While the changes we are adopting today amend 1996 Form BD, we stress that registrants have never actually used that form. Rather, during the past year, registrants have used ''Interim Form BD,'' which the Commission adopted on March 16, 1998 [14] after the NASD decided to abandon its original plan to modernize CRD and proceed instead with Web CRD.[15] Interim Form BD requires registrants to file the same disclosure information called for by the 1996 Form BD amendments in a format that is compatible with the Legacy CRD system.[16] Interim Form BD incorporated all of the substantive changes of the 1996 Form BD amendments relating to disclosure of disciplinary history, but did not incorporate the formatting changes, the 1996 DRPs, or the 1996 Schedules (including Schedule E).[17] Interim Form BD will remain in effect until the amendments adopted today are implemented on July 30, 1999.[18]

The amendments to the 1996 DRPs, which must be completed when an applicant answers ''Yes'' to one of the disclosure questions in Item 11 of Form BD, correspond to formatting changes to the DRPs that were recently approved in connection with amendments to Forms U–4 and U–5.[19] While more amendments are being made to the DRPs than to the main part of Form BD, the amendments primarily involve restructuring and reformatting which will permit electronic filing in Web CRD.[20] The only substantive change intended in the DRPs is in Question 13 of the Civil Judicial DRP. This question now requires an applicant to indicate whether any portion of a penalty assessed against it was waived.[21]

1996 Schedule E, which must be completed by an applicant to register or report a branch office, is also being amended. The amendments reflect the current numbering scheme for NASD Rules.[22]

A detailed textual description of the amendments to Form BD, its instructions and terms, the DRPs, and Schedule E (collectively, ''Appendix A'') will be available on the Commission's Web site at http:\\www.sec.gov [23] or may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001; (202) 942–0073.[24] Form BD as amended today is attached as Appendix B to this document.

III. Amendments to Related Rules

The Commission is also amending Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act. Rules 15b3–1 and 15Ca2–1 both contain ''Temporary Filing Instructions'' for Form BD that are now outdated. These amendments delete the outdated instructions in those rules and add new ''Temporary Re-Filing Instructions'' for Form BD to all three rules.

A. Electronic Filing and Re-Filing Requirements

Web CRD is intended to expedite the electronic filing of registration and licensing information for broker-dealers and their associated persons. While initial applications for broker-dealer registration on Form BD will continue to be filed on paper, the amendments require all subsequent changes and updates to the Form to be made electronically through Web CRD.[25] The amendments also require registered broker-dealers to electronically re-file certain information in Web CRD that is already filed in Legacy CRD.[26] The key dates and events associated with the transition from Legacy CRD to Web CRD, including the Web CRD filing and re-filing requirements for broker-dealer applicants and registered broker-dealers, are described below.

1. Key Dates

July 30, 1999 Through August 15, 1999

As the NASD moves from Legacy CRD to Web CRD, there will be a 17-day period beginning July 30, 1999 and ending August 15, 1999 (''System Transition Period''), during which neither system will process Form BD filings and amendments, or Form BDW filings.[27] At the time we published the Proposing Release, we expected the System Transition Period to extend from July 31, 1999 through August 15, 1999. The NASD has advised us, however, that the System Transition Period needs to be extended slightly to ensure that it has sufficient time to complete inputting data from paper forms and converting that data to the new system.

Initial filings of Form BD received during the System Transition Period will be accepted by the CRD and entered into Web CRD by the NASD beginning on August 16, 1999. Amendments to Form BD received by the CRD during this period will be returned with instructions to re-submit the amendments electronically on or after August 16, 1999. Forms BDW seeking withdrawal from registration with all

[11] Read-only fields may not be altered by registrants.

[12] *See* NASD Notice to Members 96–26.

[13] *See* Appendix A, part D. Item 5.

[14] Securities Exchange Act Release No. 39677 (February 18, 1998), 63 FR 9413 (February 25, 1998).

[15] *See* Proposing Release, part II. Background (discussing the different stages of Web CRD development).

[16] One of the principal goals of Redesigned CRD, and the 1996 amendments to Form BD, was to make certain information regarding broker-dealers and their associated persons, that is required to be reported on the applicable registration forms, more readily available to the public. Accordingly, pending the implementation of Web CRD, Interim Form BD incorporated the enhanced disclosure elicited by 1996 Form BD Question 11 into the existing Form BD Question 7. Specifically, Interim Form BD Question 7, requested information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications, other relevant history, and the applicant's financial soundness. In order to make the disclosures more organized and complete, Question 7 was divided into broad categories: criminal, civil, regulatory, and financial.

[17] The new disclosure question (Question 11) and the ''Explanation of Terms'' were the only items incorporated by Interim Form BD from 1996 Form BD because they could be made compatible with Legacy CRD. The 1996 DRPs and 1996 Schedule E, which did not become part of Interim Form BD, elicit more specific information than was required from the 1993 version of Form BD used in the Legacy CRD system.

[18] *See* discussion *infra* note 30 (regarding the change in the effective date of Form BD).

[19] Securities Exchange Act Release No. 41560 (June 25, 1999); File No. SR–NASD–98–96.

[20] The DRPs adopted today eliminate the practical problems posed by the NASD's first attempt to redesign CRD by using improved formatting. *See* Proposing Release, part III. ''Proposed Amendments to Form BD'' (discussing DRP formatting differences between the Redesigned and Web CRD systems).

[21] *See* Appendix A, part 3.c (part II. 16, 17, 18, 19, 20 and 21).

[22] The NASD Manual was reformatted in 1996. *See* NASD Notice to Members 96–25. *See also* Appendix A, part E.4.

[23] *See* Current SEC Rulemaking; Final Rules; Release No. 34–41594, File No. S7–16–99 on the SEC Web site at <http://www.sec.gov>.

[24] Appendix A will not be published in the **Federal Register**. Appendix B (Form BD) is the only appendix to this release that will be published in the **Federal Register**. Both Appendix A and Appendix B are attached as appendices to this release electronically on the Commission's Web site at <http://www.sec.gov> and in paper format from the Commission's Publications Office at (202) 942–4040.

[25] The NASD expects, however, that all filings for both broker-dealers and their associated persons will eventually be submitted exclusively through electronic means.

[26] *See infra* notes 29, 37–38 and accompanying text. *See also* part IX *infra* (Temporary Filing Instructions for Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1).

[27] Registrants that participate in the Firm Access Query System (''FAQS''), however, may electronically file Schedule E amendments through July 30, 1999. *See infra* note 30 and accompanying text.

jurisdictions and SROs that are received during this period will be held by the CRD until August 16, 1999, then entered into Web CRD by the NASD.[28] Forms BDW seeking withdrawal from registration with only some jurisdictions or SROs that are received by the CRD during this period will be returned with instructions to re-submit the filing electronically on or after August 16, 1999. During the System Transition Period, the NASD will also transfer certain information from Legacy CRD to Web CRD.[29]

July 30, 1999

The amendments to Form BD adopted today will become effective on July 30, 1999. Any filings submitted on Interim Form BD after July 30, 1999 will be returned by CRD.[30]

August 16, 1999

It is anticipated that Web CRD will be operational on August 16, 1999, at which time registered broker-dealers may begin entering information not already transferred from Legacy CRD into their respective Forms BD.[31] The requirements for broker-dealer applicants filing initial Forms BD, for registered broker-dealers filing amendments to Form BD, or for currently registered broker-dealers re-filing certain information in Web CRD on or after August 16, 1999, are described below. The issues raised by the comment letters are also discussed below in Part B.2.b, ''Re-filing and Amendments to Form BD by Registered Broker-Dealers.''

2. Filings on or After August 16, 1999

a. Initial Filings of Form BD by Broker-Dealer Applicants

Broker-dealer applicants must continue to obtain the paper version of Form BD from the Commission[32] or from the NASD.[33] They must also continue to mail the completed initial Form BD to the NASD, which will manually enter the information into the Web CRD system. This manual process will allow the NASD to establish a base record of information on broker-dealer applicants as well as begin the process of establishing a unique Web CRD user account for each broker-dealer. This account will allow broker-dealers to access their own records and file subsequent amendments to their Forms BD.

Before a broker-dealer may access Web CRD, however, it will first need to designate an ''account administrator.'' This person, who may be someone within the firm or a third-party,[34] will serve as the point-of-contact between the broker-dealer and Web CRD. The NASD will establish a user account[35] for the broker-dealer's account administrator and send a letter of confirmation to the broker-dealer containing the account administrator's user name and initial password. Among other things, the account administrator is responsible for identifying any additional persons who need access to Web CRD[36] to submit filings on the firm's behalf. Designated persons will then be given passwords and the authorization to use Web CRD as determined by the account administrator.

The NASD will manually input the information from the broker-dealer's initial Form BD into Web CRD. It will then disseminate the information to the Commission, SROs, and state securities regulators with which the broker-dealer is requesting registration. Thus, except for the establishment of an account and account administrator, the processing of the initial Form BD will not significantly differ from the filing procedures currently in place under Legacy CRD.

b. Re-Filing and Amendments to Form BD by Registered Broker-Dealers

As discussed above, the amendments adopted today also require registered broker-dealers to establish Web CRD accounts to accommodate both the transfer of existing Form BD information from Legacy CRD to Web CRD and the electronic filing of Form BD amendments in Web CRD. Beginning August 16, 1999, all Form BD amendments and re-filings must be submitted electronically through the NASD's Web site at https://crd.nasdr.com/crdmain.

As discussed in the Proposing Release, due to technical issues identified by the NASD, certain broker-dealer information currently contained in Legacy CRD will not be transferred by the NASD to Web CRD.[37] Therefore,

[28] The NASD will also accept a paper-filed Form BDW seeking withdrawal from registration in all jurisdictions and SROs on or after August 16, 1999 if it is the first filing made by a broker-dealer after implementation of the Web CRD system.

[29] Since March 1998, the NASD has been converting the following broker-dealer information from Legacy CRD to Web CRD: Base information (*i.e.*, the broker-dealer's general CRD record information including the broker-dealer's CRD number, name, Commission number, IRS number, NASD district assignment, CRD contact, and related telephone number), Registration Status, Current Address (main and mailing), Types of Business (*e.g.*, municipal securities dealer, corporate debt securities broker), and Form U–6 Disclosure (*e.g.*, Commission and NASD actions). This initial conversion was done to accommodate the NASD's Public Disclosure Program on the Internet. During the System Transition Period, the NASD will transfer any remaining data described above. In addition, it will convert the following information: Name Change History (*i.e.*, old name, new name, effective date of change), Mass Transfer History (*e.g.*, firm name and CRD number, pre-and post-merger, acquisition), and Branch Information (Schedule E). Firms will have to re-file the information that will not be transferred by the NASD from Legacy CRD. *See infra* part IX (Temporary Filing Instructions).

[30] The effective date of Form BD has changed from the proposed date of August 1, 1999 to July 30, 1999 because the NASD will not accept any filings on Interim Form BD after July 29, 1999 (*See* discussion *supra* part III.A.1. ''Key Dates—July 30, 1999 through August 15, 1999''). This change provides the NASD with two additional days needed to manually enter information from filings submitted on Interim Form BD. One exception applies to FAQS users, who will be allowed to continue filing Schedule E amendments electronically through July 30, 1999. Because FAQS filings are electronic, the NASD does not need as much time to process these amendments.

[31] Firms can take certain steps now to avoid timing problems in connection with their re-filing obligations later. For example, broker-dealers may opt to begin entering their re-filing information into their own word processing programs. This will enable them to save, and then subsequently ''cut and paste,'' their data into Web CRD beginning August 16, 1999. Web CRD is equipped to accept textual inserts from all versions of word processing programs such as Microsoft Word and WordPerfect. In addition, the NASD will be providing a template in a standard graphics format (*i.e.*, .pdf format) at <http://www.nasdr.com/3400__web.htm>. This will allow broker-dealers to enter re-filing data into sections that correspond with sections on Form BD. Firms may also ''cut and paste'' the data saved on their respective templates into Web CRD on August 16, 1999. The template is compatible with Microsoft Word version 6.0, and higher, and WordPerfect version 6.1 (Windows), and higher. Therefore, broker-dealers are now able to begin the collection and recording of re-filing information rather than waiting to begin this process on August 16, 1999.

[32] Applicants may request the Form BD Registration Package from the Commission's Publications Office at (202) 942–4040 or from any of the Commission's Regional or District Offices listed at <http://www.sec.gov/asec/secaddr.htm>. In addition, Form BD will be available from the Commission's Web site at <http://www.sec.gov> (under ''Current SEC Rulemaking; Final Rules; Release No. 34–41594, File No. S7–16–99'').

[33] Form BD will also be available from the NASD's Publications Office at (301)590–6201 or can be downloaded from NASD's Web site at <http://www.nasdr.com>.

[34] Broker-dealers have the option to designate a third party (*e.g.*, a service bureau or clearing firm) as its account administrator. However, if a broker-dealer opts for a third-party account administrator, it must acknowledge that the broker-dealer is responsible for filings made by those designated persons on behalf of the firm.

[35] Information packages on how to establish a Web CRD user account are available from the NASD at (301) 212–8181.

[36] The account administrator is responsible for determining who has access to Web CRD and may limit such access in any manner. For example, a person responsible for Form U–4 filings might not have access to Form BD on Web CRD. In addition, the account administrator may choose to allow read-only access to many individuals within the firm.

[37] Large portions of Form BD data are currently stored as text fields in Legacy CRD. It is not technologically possible for the NASD to convert this data to the counterpart text fields of Web CRD. (*See also* note 29 *supra*)

beginning on August 16, 1999, broker-dealers will be required to re-file the following Form BD information: Item 11 Disclosure (Schedule DRP), Direct/Indirect Owners (Schedules A and B), Control/Financial Information (*i.e.*, direct owners, executive officers, and indirect owners), Industry Arrangements (*e.g.*, custodial arrangements, holding company status), and Affiliated Firms. The amendments require a registered broker-dealer to re-file this information when it files its first amendment in Web CRD but, in any event, no later than December 15, 1999.[38]

In their letters commenting on the Proposing Release, ARM and CSFB both expressed concerns about this re-filing obligation. In particular, ARM and CSFB asserted that broker-dealers will require more time than was contemplated in the Proposing Release to comply with their respective re-filing obligations.[39] In response, the NASD provided additional perspective on the practical application of the suggestions provided by ARM and CSFB.[40]

In the Proposing Release, we acknowledged that broker-dealers may have difficulty complying with the requirement in Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1[41] to promptly file amendments because (1) they will not be able to file amendments to their Forms BD during the System Transition Period, and (2) they must re-file certain information from their Forms BD in Web CRD at the same time they are required to file their first amendment in Web CRD. Therefore, the staff of the Division of Market Regulation proposed to consider broker-dealers as having met this requirement if they filed an amendment that should have been filed during the System Transition Period no later than September 14, 1999 (*i.e.*, 30 days from August 16, 1999).[42] In addition, the staff proposed that during the period from August 16 to December 15, 1999, it would not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment was filed within 30 days from when the disclosable event occurred. ARM and CSFB both stated that the 30-day no action position would not be sufficient for firms to meet their Form BD re-filing obligations.

These commenters contended that several factors may contribute to a broker-dealer requiring more time to complete its re-filing. For example, ARM maintained that the revised DRPs and Schedule E elicit a higher degree of specificity than the current versions used with Interim Form BD.[43] In ARM's view, this will create additional burdens on firms to research, collect, and report information not currently required by Interim Form BD.[44]

ARM also noted that the shutdown of the CRD system during the System Transition Period may cause some firms to experience a significant backlog of Form U–4, U–5, and BD filings. This backlog, coupled with the likely occurrence of a disclosable event (*i.e.*, an event that would require an amendment to Form BD, thus triggering the re-filing obligation) within the first week of Web CRD's implementation, may inhibit a firm's ability to amend and complete its re-filing of Form BD within the proposed 30-day time period. Both commenters indicated that this situation was most likely to arise in connection with a Schedule E event (*i.e.*, the obligation of the firm to disclose the opening or closing of a branch office), within the initial weeks of Web CRD's implementation. ARM also added that many larger firms' Forms BD may be affected when one or more of their respective broker-dealer control affiliates' Forms BD are amended. In addition, ARM commented that the training of selected staff on Web CRD Internet navigation and usage will be another time constraint for broker-dealers.

In light of their concerns, ARM suggested that all firms should be allowed to wait until December 15, 1999 before completing the re-filing of their respective Forms BD. ARM also suggested, however, that firms should be permitted to input Form BD amendments into Web CRD prior to this time. As ARM noted, this would require disengaging the ''completeness checks[45] that are built into the Web CRD system to prohibit the submission of an incomplete re-filing of Form BD. For similar reasons, CSFB requested a safe harbor for the good-faith failure of firms to file amendments to Form BD on a timely basis.

We have considered the issues raised by each of the commenters. While we are sympathetic to the concerns expressed by ARM and CSFB, we are also mindful of the need to ensure that Web CRD is fully implemented no later than mid-December 1999.[46] We have determined to adopt the amendments to Rules 15b3–1, 15Ba2–2, and 15Ca2–1 as proposed, with the following modifications:

(i) The Staff's No-Action Position Under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1

The staff is extending its proposed 30-day no-action position to 60 days for disclosable events that occur during the System Transition Period as well as during the period August 16, 1999 through August 31, 1999. This position takes into account the commenters' concerns over the possibility of a backlog of filings during the System Transition Period. It also takes into account their concerns that a disclosable event may occur shortly after Web CRD becomes operational, thus prompting the re-filing requirement at a time when firms may have a backlog of filings. This no-action position should provide firms with greater flexibility to meet their re-filing obligations without unnecessarily delaying the time when the information in Web CRD is complete and up-to-date.

In reaching this position, the staff considered CSFB's suggestion for a subjective safe harbor for a firm that shows a good-faith delay in re-filing its Form BD information. The staff does not, however, believe that such a subjective standard would provide adequate guidance for registrants. Instead, the objective standards adopted

[38] The December 15, 1999 date was chosen to ensure that re-filings will take place prior to the annual shutdown of CRD for renewals and to have the re-filing complete before the Year 2000.

[39] *See* ARM and CSFB letters *supra* note 6.

[40] *See* NASD letter *supra* note 6.

[41] Exchange Act Rule 15Ca2–2 directs government securities brokers and dealers to file Form BD, in accordance with its instructions, to the CRD. The rule does not, however, contain language directing them to ''promptly'' amend Form BD when the information therein becomes inaccurate. Unlike broker-dealers that are registered under Exchange Act Sections 15(b) or 15B, government securities broker-dealers must comply with Treasury Rule 400.5 which directs them to file an amendment to Form BD within 30 days from the time the information becomes inaccurate. The staff's no-action position will apply to all registered broker-dealers, including government securities broker-dealers.

[42] The Commission has not defined what constitutes ''prompt'' filing for purposes of Rule 15b3–1 because whether a filing is deemed ''promptly filed'' needs to be determined on a facts-and-circumstances basis. Moreover, the concept of ''promptness'' changes with the evolution of technology. In the Proposing Release, the Commission stated that in no event would filing an amendment after 30 days be considered ''prompt'' at a time other than during the System Transition Period. *See* Proposing Release, note 35 and accompanying text.

[43] *See supra* notes 16–17 and accompanying text.

[44] CSFB also stated that the accurate disclosure of this information may require firms, especially larger firms, to conduct extensive research.

[45] Completeness checks ensure that a firm fully completes Form BD before it submits the form to Web CRD. If certain informational fields are left blank, the completeness check will immediately prompt the firm to complete the field. The firm will be unable to re-file its new Form BD in Web CRD until these informational fields are completed.

[46] *See* discussion *infra* part III.A.2.b.(i) (regarding Y2K and Form BD renewal requirements for firms).

today provide definitive dates by which registrants must complete their filings.

The staff also considered ARM's request to allow all firms to have until December 15, 1999 to complete their re-filing requirement, regardless of disclosable events. This suggestion, however, does not appear to be practical. As the NASD noted in its comment letter, if a large percentage of the broker-dealer community delayed re-filing until December, it could pose significant operational challenges to the NASD's CRD/Public Disclosure Department (which is responsible for reviewing and processing all form filings). That department is also responsible for comparing the information from the Form BD re-filing to the information currently in Legacy CRD. This comparison can only occur after a broker-dealer re-files its Form BD. The NASD also noted that a large percentage of firms submitting their Form BD re-filing in mid-December could impair the flexibility of both the firms and the NASD to complete final Y2K preparations. In addition, the NASD pointed out that firms that delay re-filing until mid-December also will have to be prepared to complete the annual renewal process for broker-dealers and registered representatives at the same time.[47] Finally, the NASD commented that ARM's suggestion of disengaging the completeness checks (and thereby avoiding the re-filing requirement upon the occurrence of a disclosable event) is not a viable option.[48] The staff has, therefore, modified the re-filing requirements to address the difficulties to be faced by both the firms and the NASD.

July 30, 1999–August 15, 1999

As adopted, under Rules 15b3–1, 15Ba2–2, and 15Ca2–1,[49] the staff of the Division of Market Regulation will not recommend enforcement action if a firm files an amendment to Form BD that should have been filed during the System Transition Period no later than October 15, 1999 (*i.e.*, 60 days from August 16, 1999). Therefore, a firm will have a minimum of over 90 days in which to gather its re-filing data, type it into a word processing program, and ''cut and paste'' the data into Web CRD (*i.e.*, approximately 20 days before Form BD is effective on July 30, 1999, plus 17 days during the System Transition Period, plus the 60-day no-action position, assuming a disclosable event occurs as early as July 26, 1999).

August 16, 1999–August 30, 1999

The staff of the Division of Market Regulation will not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment is filed within 60 days of a disclosable event that occurs during the period from August 16, 1999 through August 30, 1999.

August 31, 1999–December 15, 1999

With respect to disclosable events that on or after August 31, 1999, the staff of the Division of Market Regulation will not recommend enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment is filed within 30 days from when the disclosable event occurred. In any event, however, all re-filings must be completed on or before December 15, 1999.

(ii) Schedule E Disclosable Events

We are also modifying the proposed Temporary Filing Instructions under Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 by allowing firms to submit all Schedule E amendments to the CRD on paper during the period from August 16, 1999 through December 15, 1999.[50] The NASD has agreed to accept paper filings of Schedule E disclosable events and manually enter them into Web CRD, thereby overriding the completeness checks for this category of filings. Once a firm completes its re-filing, however, all subsequent Schedule E amendments must be submitted electronically in Web CRD.[51] This will allow firms to continue filing Schedule E amendments to Form BD on a timely basis without triggering the re-filing requirement. This position takes into account the commenters' concerns that the re-filing obligation may be triggered soon after Web CRD's implementation when the firms may be busy dealing with the backlog of filings generated during the System Transition Period.

While the Commission understands the concerns expressed by the commenters, we believe that the accommodations outlined above will allow firms to comply with their re-filing obligations without incurring an undue burden.[52]

B. Effective Date

Form BD, as amended today, as well as the amendments to Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act, will become effective on July 30, 1999. Section 553(d) of the Administrative Procedure Act generally provides that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the **Federal Register**.[53] One exception to the 30 day requirement is when an agency finds good cause for providing a shorter notice period. We believe that good cause exists in this situation.[54]

As discussed in Part I of this release, Web CRD, even more than Legacy CRD, is expected to be a significant regulatory tool that will benefit regulators, broker-dealers, and the public. In order to ensure that the transition from Legacy CRD to Web CRD is orderly and complete, the NASD needs an adequate System Transition Period. The NASD has made a significant effort in preparing itself, its members broker-dealers, and non-member broker-dealers for the shift from Legacy CRD to Web CRD beginning August 16, 1999. If the NASD were to delay implementation of Web CRD so as to allow new Form BD and the related rules to become effective 30 days after publication in the **Federal Register**, a significant amount of confusion could result among industry participants, with little or no benefit to anyone from the delay. Indeed, substantial costs could be incurred by

[47] Each year, firms are required to complete the process of filing renewal and termination requests for their respective registered representatives no later than December 15.

[48] According to the NASD, disengaging the completeness checks would involve a major code change to the Web CRD application. Such a change would require replacing code that has already been tested and approved. This, in turn, could lead to further system problems which would ultimately delay the deployment of Web CRD. Moreover, the NASD contends that disabling the completeness checks would require additional manual NASD staff review to ensure that all required information was submitted on a particular filing, thereby eliminating one of the significant advantages of Web CRD.

[49] *See supra* note 41 regarding the application of the staff's no-action position to government securities broker-dealers.

[50] The NASD, however, will not accept paper filings of Schedule E during the System Transition Period or at any time following December 15, 1999.

[51] The NASD will return all paper submissions of Schedule E amendments from any firm that has completed its re-filing.

[52] Currently, there are tools available to firms to assist them in complying in a timely manner with their re-filing requirements. For example, firms have the option to begin training their staff now, rather than waiting until August 16, 1999. For example, broker-dealer staff members responsible for Web CRD input have been able to review the proposed Form BD since May 10, 1999. They may now also access a Web CRD Tutorial at <http://www.nasd.com/crd__cbt/crd__1.htm>. In addition, during the month of July 1999, on Tuesdays, Wednesdays, and Thursdays, the NASD will provide access to the Web CRD system which will allow firm staff to ''practice'' using the Web CRD system with mock data. This will enable staff to become more familiar with Web CRD prior to its implementation. Firms will not, however, be able to begin inputting its actual re-filing information until August 16, 1999.

[53] 5 U.S.C. § 553(d).

[54] 5 U.S.C. § 553(d)(3).

broker-dealers and the NASD, all of which have been preparing for the System Transition Period and for Web CRD's implementation on August 16, 1999.

Because the System Transition Period will commence at the end of July 1999, Web CRD should be operational on August 16, 1999. As a practical matter, although Form BD and the related rules will be effective beginning July 30, 1999, Web CRD will not be implemented until August 16, 1999. Thus, firms will effectively have notice of the new forms and rules for over 30 days before compliance with them is required. Most initial filers on new Form BD will have been in contact with the staff at the NASD prior to their actual filing and will, as a consequence of that contact, have actual notice of the substance of the new Form BD.

Additionally, not delaying the System Transition Period should help ensure that firms have adequate time to complete their re-filing obligations before Year 2000. In addition, not delaying the System Transition Period will allow the NASD sufficient time before Year 2000 to capture the data submitted on paper forms during the System Transition Period.

The Commission hereby finds that there is good cause for making the amendments to Form BD and Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–1 effective on July 30, 1999, even if this date is less than 30 days after notice of the amendments has been published in the **Federal Register**.

IV. Cost Benefit Analysis

We expect that the benefits of Web CRD to the industry will outweigh the costs associated with the one-time re-filing requirement [55] for registered broker-dealers. In the Proposing Release, we stated our preliminary view that when Web CRD is fully implemented, it would minimize future regulatory burdens on broker-dealers for filing Form BD and related amendments. No commenters addressed this aspect of the Proposing Release except to state that the benefits of Web CRD are welcomed by the industry. Furthermore, industry representatives told us that they expect their costs involving postage, duplication, and staff time to be reduced by using the Internet to file Form BD amendments. We estimate that broker-dealers filed approximately 15,350 Form BD amendments in Legacy CRD for fiscal year 1998. Industry representatives estimate that each amendment in Legacy CRD typically requires $.60 for duplication costs (*i.e.*, $.05 per page at approximately 12 pages), $180 for postage (*i.e.*, $12 × approximately 15 next-day mailings to the CRD, SROs, and relevant states), and $140 of staff time required to fill out the amendment to Form BD and submit it to the appropriate regulators (*i.e.*, 4 hours of staff time per amendment x an average compensation rate of $35 per hour). Thus, the total annual cost burden to the industry to amend Form BD in Legacy CRD is approximately $4,921,210 (*i.e.*, [$.60 + $180 + $140] × a yearly average of 15,350 amendments).

In contrast, industry representatives estimate that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Therefore, we estimate that the annual cost burden to the industry to amend Form BD under Web CRD will be approximately $177,293 (*i.e.*, .33 hours × a yearly average of 15,350 amendments × an average compensation rate of $35 per hour).[56] This will result in a total annual cost savings of over $4.5 million for all broker-dealers amending Form BD.

Because the form will still be filed initially on paper, the amendments will not alter the current burden on initial filers of Form BD. In addition, the amendments requiring broker-dealers to designate an account administrator and establish an account with an Internet Service Provider (''ISP'') [57] are not expected to significantly alter the current burden on broker-dealers. As described above, the account administrator will be the point-of-contact between the broker-dealer and the CRD. According to industry representatives, the account administrator will most likely be the person who already performs filing and reporting functions for the firm (either internally or as a third-party filer). It is anticipated, therefore, that this person will continue to be the point-of-contact with the CRD and continue to perform similar reporting and administrative tasks for the firm.

With respect to ISP accounts, we are of the view that the requirement that broker-dealers have Internet access (either internally or through a third-party filer) will not significantly alter the current burden on broker-dealers. Most broker-dealers already have Internet access and, for those that do not, the cost of obtaining an ISP account averages approximately $20 per month. In addition, many broker-dealers use the Internet for other business purposes such as sending and receiving e-mail, maintaining a Web site, or delivering documents. For these broker-dealers, the additional burden to file amendments to Form BD through the Internet will be only a fraction of their total costs associated with their use of the Internet.

We also believe that Web CRD will benefit regulators and the public by streamlining the capture of relevant information pertaining to broker-dealers and their associated persons. Precise information regarding a broker-dealer's activities and disciplinary history is needed for investigations and examinations by regulators. It also is a valuable informational resource for investors in deciding whether to entrust their financial assets to a particular broker-dealer.[58] While it is impossible to quantify these benefits, we expect that they will exceed the recordkeeping and reporting burden imposed on broker-dealers.

V. Consideration of Competition, Efficiency, and Capital Formation/ Impact on Competition

In addition, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996, provides that whenever the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [59] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that will impose a burden on competition not necessarily or appropriate in furthering the purpose of the Exchange Act.

As noted above, the form revisions and related rule amendments adopted

[55] *See* discussion *infra* in part VII (Paperwork Reduction Analysis) regarding the burden hours for the one-time re-filing of certain information on Form BD.

[56] Broker-dealers that employ third-party filers account for approximately 3,009 of the Form BD amendments (*i.e.*, an approximate cost burden of $34,754). *See* discussion *infra* notes 66–67 and accompanying text (regarding the hour and cost burdens on these broker-dealers).

[57] A broker-dealer will also need access to an Internet browser (*e.g.*, Netscape, Internet Explorer) in order to submit filings over the Internet. Internet browsers typically are provided by the ISP or can be downloaded free of charge from the Internet.

[58] The NASD receives approximately 525,000 inquiries each year from the public requesting information about broker-dealers or their associated persons.

[59] 15 U.S.C. 78w(a)(2).

today should reduce the regulatory burden on broker-dealers by facilitating electronic filing over the Internet, which will be a more efficient and cost-effective means for broker-dealers to meet their regulatory and reporting obligations. No commenters suggested otherwise. The amendments to Form BD and the related rules under the Exchange Act therefore will not result in any new burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. No commenters suggested otherwise.

VI. Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis (''FRFA''), pursuant to the requirements of the Regulatory Flexibility Act,[60] regarding the amendments to Form BD. We did not receive any comments on our Initial Regulatory Flexibility Analysis (''IRFA'').[61] As noted above and in the FRFA, the revisions to Form BD and related rules are intended to respond to the shift from the network-based architecture and proprietary software approach anticipated in the 1996 CRD system to the Internet-based Web CRD. The revisions to Form BD not only should provide benefits to securities regulators in the retrieval of information, but should also ease the burden of registration by future registrants, including small businesses. The FRFA also indicates that, except for the one-time re-filing requirement on registered broker-dealers, the revisions to Form BD will reduce aggregate cost and time burdens on broker-dealers, including small entity broker-dealers, who are required to file, or make amendments to, Form BD. The FRFA further indicates that because the amendments generally are intended to lessen the burden of registration, small broker-dealers will be affected in the same manner as other registrants. Thus, exempting small broker-dealers from Form BD disclosures would be unwarranted.

A copy of the FRFA may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001; (202) 942–0073.

VII. Paperwork Reduction Act Analysis

Certain provisions of the amendment to Form BD contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*). The Commission submitted the proposal to the Office of Management and Budget (''OMB'') for review in accordance with PRA requirements in effect at this time. The title for this collection of information: ''Application for Registration as a Broker or Dealer.'' OMB has approved the amendments to Form BD and has assigned Form BD OMB control Number 3235–0012 with an expiration date of March 31, 2001. The information required by Form BD is mandatory and the responses are not kept confidential. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The amendments to Form BD are expected to provide securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding DRPs used to disclose details of the registrant's disciplinary history. The amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.[62]

As discussed above, the amendments to Form BD respond to certain recommended changes to the CRD system that have led to its redesign as an Internet-based system. Web CRD is expected to be more useful to securities regulators. It will also allow broker-dealers to file amendments to Form BD and other uniform registration forms electronically. Because Web CRD is intended to operate in an electronic environment, paper amendments to Form BD will no longer be submitted by broker-dealers. Rather, broker-dealers will be able to access and update their respective Forms BD through the NASD's Web site. This should result in cost-savings related to copying, postage, and staff time. Under Web CRD, broker-dealers will not have to obtain dedicated computer systems or proprietary software as would have been required under Redesigned CRD. Rather, a firm only needs access to the Internet and an Internet browser through an account with an ISP to submit filings electronically.

Broker-dealers already are required pursuant to Rule 15b1–1[63] under the Exchange Act to file for registration on Form BD and, pursuant to Rule 15b3–1(b),[64] to promptly file an amendment to Form BD if any information contained therein becomes inaccurate.[65] These amendments are intended to adapt Form BD to Web CRD's Internet-based environment. Therefore, except for the one-time re-filing requirement, the amendments to Form BD and the related rules will not impose any significant additional recordkeeping, reporting or other compliance requirement on broker-dealers. Initial filings of Form BD will continue to be made on paper and the electronic filing of Form BD amendments is expected to reduce time and cost burdens on broker-dealers.

With respect to the one-time re-filing requirement, we estimate (based on discussions with industry representatives) that the average time necessary to complete a re-filing will be as follows: (1) Approximately 30 large firms (total capital of more than $500 billion) will require approximately 40 hours each to re-file, (2) approximately 170 medium firms (total capital between $499 billion and $20 million) will require approximately 24 hours each to re-file, and (3) approximately 6,640 small firms[66] (total capital below $20 million) will require approximately 2 hours each to re-file. Thus, the total burden hours for the re-filing of certain disclosure information into Web CRD is estimated as 18,560 hours [30 large firms × 40 (1,200) + 170 medium firms

[60] 5 U.S.C. 603.

[61] A summary of the IRFA was included in the Proposing Release at part X.

[62] The Commission uses the information disclosed by applicants in Form BD to: (i) determine whether broker-dealer applicants meet the standards for registration set forth in the provisions of the Exchange Act; (ii) develop and maintain a central information resource where members of the public may obtain relevant, current information about broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers, and where the Commission and other securities regulators may obtain information for investigatory purposes; and (iii) develop statistical information concerning broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers.

[63] 17 CFR 240.15b1–1.

[64] 17 CFR 240.15b3–1(b).

[65] As noted above, Exchange Act Rule 15Ba2–2 also requires municipal securities dealers to promptly file an amendment to Form BD if any information contained therein becomes inaccurate. Treasury Rule 400.5 requires government securities brokers and dealers to file such an amendment within 30 days from the time information in their Forms BD become inaccurate. *See also* note 41 *supra*.

[66] The Commission estimates that approximately 20% of the small broker-dealer population (*i.e.*, 1,660 [.20 x 8,300 small broker-dealers]) employ third parties to file information related to their respective Forms BD with the CRD. These broker-dealers will not incur an hour burden and, therefore, for purposes of the Paperwork Reduction Act, are removed from the hour-burden calculation for small broker-dealers (*i.e.*, 8,300 total small broker-dealers—1,660 small broker-dealers that employ third-party filers = 6,640 small broker-dealers that will incur hour burdens). As discussed below, however, the 1,660 broker-dealers will incur a cost burden with respect to re-filing and Form BD amendments.

× 24 (4,080) + 6,640 small firms × 2 (13,280) = 18,560].

Broker-dealer applicants are also subject to Form BD's initial reporting obligation. Form BD is only submitted once and is updated by amendment (*see* discussion on Form BD amendments below). For fiscal year 1998, the Commission received approximately 790 Form BDs for an initial or successor application for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rules 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, we estimate that the average time necessary to complete the initial form is approximately 2.75 hours. Thus, the Commission estimates that total annual burden hours required for the initial filing of a Form BD is 2,173 hours (2.75 × 790). It is important to note that the amendments adopted today do not alter the current burden on initial filers of Form BD because a Form BD filed for the first time is still required to be filed on paper.

Under Web CRD, all amendments to Form BD will be filed electronically. For fiscal year 1998, the Commission received approximately 15,350 amendments. Of these 15,350 amendments, approximately 3,009 were from broker-dealers that employ third-party filers.[67] Because these broker-dealers will incur cost burdens rather than hour burdens, they will be removed from the total annual hour burden calculation (*see* discussion regarding cost burdens on broker-dealers that employ third-party filers below). Therefore, for purposes of the annual hour burden calculation, the total annual number of amendments to Form BD will be 12,341 (*i.e.*, 15,350 total amendments—3,009 amendments filed by third-party filers). The staff estimates that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Thus, the total annual burden hours for the filing of Form BD amendments is 4,073 hours (.33 hours x approximately 12,341 [15,350—3009] amendments per year).

We estimate that the total annual filing burden for Form BD and Form BD amendments is 6,246 hours (2,173 for initial filings of Form BD + 4,073 for amendments to Form BD). This is a reduction of approximately 1,030 total burden hours from the annual regulatory burden anticipated in Redesigned CRD. However, the total one-time re-filing burden will be approximately 18,560 hours. Accordingly, for the year when Web CRD is first implemented, the total hour burden will be approximately 24,806 hours.

We also anticipate that the burden hours discussed above will apply similarly to broker-dealers who rely on third-party filers. Instead of incurring the cost of staff time, however, these broker-dealers will be billed by third-party filers at an average compensation rate of $35 per hour. Therefore, a small broker-dealer will pay a third-party filer $70 (2 hours for re-filing x $35 per hour) to comply with its one-time re-filing obligation. This will amount to a total, one-time cost burden of $58,100 ($70 x 1,660 small broker-dealers that employ third-party filers).

Broker-dealers that employ third-party filers to file amendments to Form BD will also incur a cost burden. As discussed above in Part VII (Cost Benefit Analysis), the Commission estimates that approximately 15,350 amendments to Form BD are filed each year by broker-dealers. Of these 15,350 amendments, approximately 3,009 are from broker-dealers that employ third-party filers. The average time necessary to complete an amendment on Web CRD is estimated to be approximately 20 minutes. Therefore, the total annual cost burden to broker-dealers that employ third-party filers to file amendments to Form BD will be approximately $34,754 (*i.e.*, .33 hours x 3,009 amendments x an average compensation rate of $35 per hour). The staff estimates that the total annual cost burden to these broker-dealers for re-filing and amending Form BD is approximately $92,854 (*i.e.*, $58,100 + $34,754).

With respect to ISP accounts, we are of the view that most broker-dealers already have Internet access (either internally or through a third-party filer), which they currently use to send and receive e-mail, to maintain a Web site, or to deliver documents.[68] Therefore, the use of their existing Internet accounts for filing in Web CRD will be incremental and will not significantly alter their current burden. As discussed above in Part VII (Cost Benefit Analysis), for those broker-dealers that do not currently have access to the Internet, the cost burden of obtaining an ISP account is approximately $20 per month. The Commission estimates that approximately 5% of all broker-dealers (approximately 425 broker-dealers) do not currently have access to the Internet either directly or through the use of a third-party filer. Therefore, the total annual cost burden for obtaining and maintaining an Internet account will be approximately $102,000 [$20 × 12 months x (.05 × 8500)].

Accordingly, for the year when Web CRD is first implemented, the total cost burden will be $194,854 (*i.e.*, $102,000 for ISP accounts + $92,854 for broker-dealers employing third-party filers to amend and re-file Form BD).

It is important to note that regardless of whether a broker-dealer employs a person internally or hires a third-party to file information in CRD, ultimately the same costs will apply.

VIII. Statutory Basis

The foregoing amendments are adopted pursuant to the Exchange Act and particularly to Sections 15(a), 15(b), 15B, 15C, and 23(a) therein.[69]

IX. Lists of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities

Statutory Basis and Text of Final Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b3–1 by removing paragraph (b), redesignating

[67] Out of the approximate 15,350 amendments filed each year, approximately 15,043 are filed by small broker-dealers (*i.e.*, 8,300 small broker-dealers = 98% of the broker-dealer community; 15,350 × .98 = 15,043). As discussed above, approximately 1,660 (20%) of small broker-dealers employ third-party filers and, therefore, will be responsible for approximately 3,009 of the total annual amendments to Form BD (*i.e.*, 15,043 amendments by small broker-dealer community × .20 = 3,009 amendments).

[68] In addition, NASD members are already required to have an electronic mail account and to be able to access NASD Regulation's Web site for the purpose of updating their Firm Contact Questionnaire. *See* NASD By-Laws Article IV, Section 3.

[69] 15 U.S.C. §§ 78o(a), 78o(b), 78o–4(a)(2), 780–5(a)(2), and 78w(a).

paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.* (1) Except as provided in paragraph (c)(3) of this section, every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD (17 CFR 249.501):

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every registered broker-dealer that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (c) shall not be deemed an ''amendment'' for purposes of paragraphs (a) and (b) of this section.

3. By amending § 240.15Ba2–2 by adding paragraph (e) to read as follows:

§ 240.15Ba2–2. Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(e) *Temporary re-filing instructions.* (1) Except as provided in paragraph (e)(3) of this section, every dealer that is registered in accordance with this section shall re-file with the Central Registration Depository, at the time the dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every dealer that is registered in accordance with this section, at the time it re-files the information required by paragraph (e)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every dealer that is registered in accordance with this section but that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (e)(3) shall not be deemed an ''amendment'' for purposes of paragraphs (e)(1) and (e)(2) of this section.

4. By amending § 240.15Ca2–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

* * * * *

(c) *Temporary re-filing instructions.* (1) Except as provided in paragraph (c)(3) of this section, every registered government securities broker or government securities dealer shall re-file with the Central Registration Depository, at the time the broker or dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered ''Yes,'' the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered ''Yes,'' the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered government securities broker or dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

(3) Every registered government securities broker or government securities dealer that has not completed the re-filing requirements provided in paragraphs (c)(1) and (c)(2) of this section, during the period from August 16, 1999 to December 15, 1999, shall submit in paper format to the Central Registration Depository all Schedule E amendments to Form BD. A Schedule E filed pursuant to this paragraph (c)(3) shall not be deemed an ''amendment'' for purposes of paragraphs (c)(1) and (c)(2) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

Appendix B—Form BD [Amended]

11. By revising Form BD (referenced in § 249.501) to read as set forth in appendix B.

By the Commission.

Dated: July 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

Note: The following Appendices will not appear in the Code of Federal Regulations:

Appendix A

Appendix A will also not appear in the **Federal Register** but is available in the Commission's Public Reference Room and on the Commission's Web site at www.sec.gov.

Appendix B—Form BD

BILLING CODE 8010–01–P

Form BD

OMB APPROVAL	
OMB Number:	3235-0012
Expires:	March 31, 2001
Estimated average burden hours per:	
Response	2.75
Amendment	0.33

Uniform Application for Broker-Dealer Registration

SEC 1490 (7/1999)

FORM BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers must file this form to register with the Securities and Exchange Commission, the *self-regulatory organizations*, and *jurisdictions* through the Central Registration Depository ("CRD") system, operated by the NASD.
2. **UPDATING** – By law, the *applicant* must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.
3. **CONTACT EMPLOYEE** – The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **GOVERNMENT SECURITIES ACTIVITIES**
   A. Broker-dealers registered or *applicants* applying for registration under Section 15(b) of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2B.
   B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, answer "yes" to Item 2C if conducting only a government securities business.
   C. Broker-dealers registered under Section 15(b) of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2D.

NOTE: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2A and 2D. By doing so, broker-dealer expressly consents to withdrawal of broker-dealer's registration under 15C of the Exchange Act.

5. **FEDERAL INFORMATION LAW AND REQUIREMENTS** – 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. Section 15, 15c, 17(a) and 23(a) of the Exchange Act authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§78o, 78o-5, 78-q and 78w. Filing of this Form is mandatory; however the social security number information, which aids in identifying the *applicant*, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the securities business. The Form also is used by *applicants* to register as broker-dealers with certain *self-regulatory organizations* and all of the states. The Commission and the National Association of Securities Dealers, Inc. maintain the files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. PAPER FILING INSTRUCTIONS (FIRST TIME *APPLICANTS* FILING WITH CRD AND WITH SOME *JURISDICTIONS*)

1. **FORMAT**
   A. A full paper Form BD is required when the *applicant* is filing with the CRD for the first time. In addition, some *jurisdictions* may require a separate paper filing of Form BD. The *applicant* should contact the appropriate *jurisdiction(s)* for specific filing requirements.
   B. Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing.
   C. Type all information.
   D. Give the name of the broker-dealer and date on each page.
   E. Use only the current version of Form BD and its Schedules or a reproduction of them.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP(BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). Attach a copy of the fully completed DRP(BD) or DRP(U-4) previously submitted. If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP(BD).
3. **SCHEDULES A, B AND C** – File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the CRD system who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21. Signatures are not required.
4. **SCHEDULE D** – Schedule D provides additional space for explaining answers to Item 1C(2), and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 of Form BD.

C. ELECTRONIC FILING INSTRUCTIONS (*APPLICANTS* / REGISTERED BROKER-DEALERS FILING AMENDMENTS WITH CRD)

1. **FORMAT**
   A. Items 1-13 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   B. *Applicant* must complete the execution screen certifying that Form BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   C. To amend information, *applicant* must update the appropriate Form BD screens.
   D. A paper copy, with original manual signatures, of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP(BD). Details for the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP(BD) screen.

3. **DIRECT AND INDIRECT OWNERS** – Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur. *Control affiliates* that are individuals who are not required to file a Form U-4 (individual registration) with the CRD must complete page 2 of Form U-4 (i.e., submit/file the information elicited by the Personal Data, Residential History, and Employment and Personal History sections of that Form). The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21.

The CRD mailing address for questions and correspondence is:

NASAA/NASD CENTRAL REGISTRATION DEPOSITORY
P.O. BOX 9495
GAITHERSBURG, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

1. **GENERAL**

APPLICANT – The broker-dealer applying on or amending this form.

CONTROL – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

JURISDICTION – A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

PERSON – An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION – Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. **FOR THE PURPOSE OF ITEM 5 AND SCHEDULE D**

SUCCESSOR – An unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor broker-dealer, who ceases its broker-dealer activities. [See Securities Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993)]

3. **FOR THE PURPOSE OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)**

CONTROL AFFILIATE – A *person* named in Items 1A, 9 or in Schedules A, B or C as a *control* person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

FOREIGN FINANCIAL REGULATORY AUTHORITY – Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *investment* or *investment-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

CHARGED – Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

FELONY – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

MISDEMEANOR – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD PAGE 1 (Execution Page) (REV. 7/1999)	UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION Date: _____ SEC File No.: 8-_____ Firm CRD No.: _____	OFFICIAL USE	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant*:
   A. Full name of *applicant* (if sole proprietor, state last, first and middle name):
   _____
   B. IRS Empl. Ident. No.:
   _____
   C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.
   _____
   (2) List on Schedule D, Page 1, Section I any other name by which the firm conducts business and where it is used.
   D. If this filing makes a name change on behalf of the *applicant*, enter the new name and specify whether the name change is of the ☐ *applicant* name (1A) or ☐ business name (1C):
   Please check above. _____
   E. Firm main address: (Do not use a P.O. Box)
   _____
   (Number and Street) (City) (State/Country) (Zip+4/Postal Code)
   Branch offices or other business locations must be reported on Schedule E.
   F. Mailing address, if different:
   _____
   G. Business Telephone Number:
   _____ _____
   (Area Code) (Telephone Number)
   H. Contact Employee:
   _____ _____ _____
   (Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date (MM/DD/YYYY) Name of Applicant

By: _____ _____
Signature Print Name and Title

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

FORM BD
PAGE 2
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

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2. Indicate by checking the appropriate box(es) each governmental authority, organization, or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer.

SECURITIES AND EXCHANGE COMMISSION

If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below. ☐

	YES	NO
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934?	☐	☐
Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.		
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	☐	☐

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SRO

☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of *applicant:*

☐ Corporation ☐ Sole Proprietorship ☐ Other *(specify)* _____
☐ Partnership ☐ Limited Liability Company

B. Month *applicant's* fiscal year ends: _____

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY)

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: __ __ __ – __ __ – __ __ __ __

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD.* *If "Yes," contact CRD prior to submitting form; complete appropriate items on Schedule D, Page 1, Section III.*	☐	☐
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does *applicant* refer or introduce customers to any other broker or dealer? *If "Yes," complete appropriate items on Schedule D, Page 1, Section IV.*	☐	☐

FORM BD
PAGE 3
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

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	YES	NO
8. Does *applicant* have any arrangement with any other *person,* firm, or organization under which:		
A. any books or records of *applicant* are kept or maintained by such other *person,* firm or organization?	☐	☐
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person,* firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person,* firm or organization?	☐	☐
For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).		
If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV.		
9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
A. *control* the management or policies of the *applicant* through agreement or otherwise?	☐	☐
B. wholly or partially finance the business of *applicant*?	☐	☐
Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.		
10. A. Directly or indirectly, does *applicant control,* is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V.		
B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI.		
11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE		
A. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony?*	☐	☐
(2) been *charged* with any *felony?*	☐	☐
B. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE		
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on the *applicant* or a *control affiliate,* or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	☐	☐

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PAGE 4
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

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	YES	NO
REGULATORY ACTION DISCLOSURE		
D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority:*		
(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order,* prevented it from associating with an *investment-related* business or restricted its activities?	☐	☐
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐
CIVIL JUDICIAL DISCLOSURE		
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	☐	☐
FINANCIAL DISCLOSURE		
I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
(1) has been the subject of a bankruptcy petition?	☐	☐
(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	☐	☐
K. Does the *applicant* have any unsatisfied judgments or liens against it?	☐	☐

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(REV. 7/1999)

Applicant Name: _____
Date: _____ Firm CRD No.: _____

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12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant.* Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group *participant (corporate securities other than mutual funds)*	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other *(give details on Schedule D, Page 1, Section II)*	☐ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does *applicant* engage in any other non-securities business?	☐	☐

If "yes," describe each other business briefly on Schedule D, Page 1, Section II.

Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the *applicant*. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;
   (b) in the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (c) in the case of an *applicant* that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and
   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant's* capital, the trust and each trustee.
   (e) in the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the *applicant* required to be reported on Schedule B? ☐ Yes ☐ No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA – less than 5%; A – 5% but less than 10%; B – 10% but less than 25%; C – 25% but less than 50%; D – 50% but less than 75%; E – 75% or more

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
			MM	YYYY			PR		

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. 7/1999)

Applicant Name: ______________________________

Date: ______________ Firm CRD No.: ______________

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the *applicant*. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to *acquire*, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) in the case of an owner that is a partnership, **all** general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) in the case of an owner that is a trust, the trust and each trustee.
   (d) in the case of an owner that is a Limited Liability Company ("LCC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

Schedule C of FORM BD

AMENDMENTS TO SCHEDULES A & B

(Amendments to answers for Form BD Item 3)
(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the Type of Amendment ("Type of Amd.") column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
					MM	YYYY			PR		

Schedule D of FORM BD

Page 1

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the *jurisdiction(s)* in which they are used.

1. Name	*Jurisdiction*	2. Name	*Jurisdiction*
3. Name	*Jurisdiction*	4. Name	*Jurisdiction*

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z); or any other non-securities business (ITEM 13B). Use reverse side of this sheet for additional comments if necessary.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of *Succession* MM / DD / YYYY	Name of Predecessor	
Firm CRD Number	IRS Employer Identification Number (if any)	SEC File Number (if any)

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor.* Use reverse side of this sheet for additional comments if necessary.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement or agreement, enter the effective date of the change.

Firm or Organization Name	CRD Number (if any)	
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY
Individual Name (if applicable) *(Last, First, Middle)*	CRD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the *control* or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use reverse side of this sheet for additional comments if necessary.

Schedule D of FORM BD

Page 2

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 2 to report details for Item 10A. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10A

☐ 10A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

SECTION V ***Complete this section for control issues relating to ITEM 10A only.***

The details supplied relate to:

1

Partnership, Corporation, or Organization Name	CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2

Partnership, Corporation, or Organization Name	CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3

Partnership, Corporation, or Organization Name	CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No	If Yes, provide country of domicile or incorporation:	Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No	Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD

Page 3

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 3 to report details for Item 10B. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10B

☐ 10B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

4 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 4 organizations/institutions to report, complete additional Schedule D Page 3s.

Schedule E of FORM BD

(REV. 7/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

INSTRUCTIONS

General: Use this schedule to register or report branch offices or other business locations of the *applicant*. Repeat Items 1-12 for each branch office or other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary. If this branch office or other business location is using a name in connection with securities activities other than the *applicant's* name, such name must be reported under Item 1C(2) on Page 1 of this form.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and the *applicant* is filing the initial notice, "Delete" when a branch office or other business location is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when the *applicant* adds a branch office or other business location as discussed in Item 1 above. If known, complete this item for all deletions and amendments.

Item 3. The Billing Code is an alpha/numeric value consisting of up to eight characters. It is the responsibility of the firm to establish and maintain its own unique billing codes. This is not a required field.

Item 4. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 5. Complete this item only when the *applicant* changes the address of an existing branch office or other business location.

Item 6. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, credit union, or other financial institution, enter the name of the institution in the space provided.

Item 7. Complete this item for all entries. Enter the name of the supervisor or registered representative in charge who is physically at this location.

Item 8. Provide the CRD number for the branch office supervisor named in Item 7.

Item 9. Complete this item for all entries. Provide the date that the branch office or other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 10. Check "Yes" or "No" to denote whether the location will be an Office of Supervisory Jurisdiction (OSJ) as defined in NASD Rule 3010.

Item 11. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the *applicant*; (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 12. Check the appropriate box(es) if the branch or other business location is registering with the NASD or registering or reporting with a *jurisdiction*.

---

1. *Check only one box:*
☐ Add ☐ Delete ☐ Amendment

2. CRD Branch Number _____

3. Billing Code _____

4. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

6. _____ Institution Name (if applicable)

7. _____ Supervisor Name

8. _____ CRD Number of Supervisor

9. _____ Effective Date (MM/DD/YYYY)

10. OSJ ☐ Yes ☐ No

11. ☐ Yes ☐ No
If Yes, indicate each Item 11 subset that applies:
☐ A ☐ B ☐ C ☐ D

12. ☐ NASD ☐ *Jurisdiction*

---

1. *Check only one box:*
☐ Add ☐ Delete ☐ Amendment

2. CRD Branch Number _____

3. Billing Code _____

4. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
_____ P.O. Box (if applicable), Suite, Floor
_____ City, State/Country, Zip Code + 4/Postal Code

6. _____ Institution Name (if applicable)

7. _____ Supervisor Name

8. _____ CRD Number of Supervisor

9. _____ Effective Date (MM/DD/YYYY)

10. OSJ ☐ Yes ☐ No

11. ☐ Yes ☐ No
If Yes, indicate each Item 11 subset that applies:
☐ A ☐ B ☐ C ☐ D

12. ☐ NASD ☐ *Jurisdiction*

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11A and 11B*** of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- ☐ (2) been *charged* with any *felony*?

11B In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been *charged* with a *misdemeanor* specified in 11B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted. Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the *applicant* or *control affiliate* exercise(d) *control*: Enter organization name, whether or not the organization was an *investment-related* business and the *applicant's* or *control affiliate's* position, title or relationship.

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

3. **Event Disclosure Detail** (Use this for both organizational and individual charges.)

   A. Date First Charged (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

   C. Did any of the Charge(s) within the Event involve a *Felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

4. **Disposition Disclosure Detail**: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial, etc.], B. Date, C, Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (The information must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;
Check ☑ item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?
- ☐ (5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:
- ☐ (1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
- ☐ (3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?
- ☐ (5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?

11E Has any *self-regulatory organization* or commodities exchange ever:
- ☐ (1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?
- ☐ (3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. Regulatory Action initiated by:

☐ SEC ☐ Other Federal ☐ State ☐ *SRO* ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

2. Principal Sanction: (check appropriate item)

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

3. Date Initiated (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved: (check appropriate item)

☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ Order ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

12.

A. Were any of the following Sanctions Ordered? (Check all appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?
- ☐ (b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority*?

11H(2) ☐ Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

2. Principal Relief Sought: (check appropriate item)

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

3. Filing Date of Court Action (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

4. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed ☐ Derivative(s) ☐ Investment Contract(s)
☐ Annuity(ies) - Variable ☐ Direct Investment(s) - DPP & LP Interest(s) ☐ Money Market Fund(s)
☐ CD(s) ☐ Equity - OTC ☐ Mutual Fund(s)
☐ Commodity Option(s) ☐ Equity Listed (Common & Preferred Stock) ☐ No Product
☐ Debt - Asset Backed ☐ Futures - Commodity ☐ Options
☐ Debt - Corporate ☐ Futures - Financial ☐ Penny Stock(s)
☐ Debt - Government ☐ Index Option(s) ☐ Unit Investment Trust(s)
☐ Debt - Municipal ☐ Insurance ☐ Other _____

Other Product Types:

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

6. *Control Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other_____

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. **Resolution Detail:**

A. Were any of the following Sanctions Ordered or Relief Granted? (Check appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to action(s), allegation(s), disposition(s) and/or finding(s) disclosed above. (The information must fit within the space provided.):

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

- ☐ (1) has been the subject of a bankruptcy petition?
- ☐ (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

BD DRP - *CONTROL AFFILIATE*

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

☐ Bankruptcy ☐ Declaration ☐ Receivership
☐ Compromise ☐ Liquidated ☐ Other _____

2. Action Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

(continued)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

(continuation)

3. If the financial action relates to an organization over which the *applicant* or *control affiliate* exercise(d) *control*, enter organization name and the *applicant's* or *control affiliate's* position, title or relationship:

Was the Organization *investment-related?* ☐ Yes ☐ No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

5. Is action currently pending? ☐ Yes ☐ No

6. If not pending, provide Disposition Type: (check appropriate item)

☐ Direct Payment Procedure ☐ Dismissed ☐ Satisfied/Released
☐ Discharged ☐ Dissolved ☐ SIPA Trustee Appointed ☐ Other _____

7. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently Open? ☐ Yes ☐ No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

10. Provide details to any status/disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

Rev. Form BD (7/1999)

BOND DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11J*** of Form BD;

Check ☑ item(s) being responded to:

11J ☐ Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of the bonding company action: (The information must fit within the space provided.)

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to ***Item 11K*** of Form BD;

Check ☑ item(s) being responded to:

11K ☐ Does the *applicant* have any unsatisfied judgments or liens against it?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF *APPLICANT*	*APPLICANT* CRD NUMBER

1. Judgment/Lien Amount:

2. Judgment/Lien Holder:

3. Judgment/Lien Type: (check appropriate item)
   ☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

   If No, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

   If No, how was matter resolved? (check appropriate item)
   ☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (The information must fit within the space provided.):

Rev. Form BD (7/1999)

[FR Doc. 99–17459 Filed 7–6–99; 3:47 pm]
BILLING CODE 8010–01–C

Federal Register

Monday
July 12, 1999

Part III

Environmental Protection Agency

40 CFR Part 9 et al.

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 262, 264, 265, and 270

[FRL–6374–8]

Project XL Rulemaking for New York State Public Utilities; Hazardous Waste Management System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule provides regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended. It allows participating New York State Utilities to consolidate hazardous waste, which they generate at remote locations, at designated Utility-owned central collection facilities (UCCFs) for up to 90 days subject to specified requirements. EPA is promulgating this rule to implement an XL project for Utilities in New York State. The terms of the XL project are defined in the Final Project Agreement (FPA) which is scheduled to be signed by the parties on July 12, 1999. The FPA explains the project in detail, while the promulgation of this federal rule will enable New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes . The requirements of this rule will not take effect in New York State until it adopts the requirements as state law. For the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

In order to qualify for the flexibility that the rule provides New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation and approval of UCCFs. Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. EPA expects this XL project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

DATES: This final rule is effective on January 10, 2000.

ADDRESSES: A docket containing public comments and supporting materials is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–NYSP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Information is also available on the world wide web at http://www.epa.gov/ProjectXL.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4143.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is organized as follows:

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2. USWAG Comment
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I. Authority

These regulations are being published under the authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, and 6974.

II. Background

A. Overview of Project XL

The FPA sets forth the intentions of EPA and the NYSDEC with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The regulation would facilitate implementation of the project. Project XL—''eXcellence and Leadership'' was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative

pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting the risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the NYSDEC XL project addresses the XL criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, it expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, e.g., section 8001 of RCRA.

B. Overview of the NYSDEC XL Project

1. Introduction

Today's rule will facilitate implementation of the FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, New York State Department of Environmental Conservation (NYSDEC), New York State Utilities, and other stakeholders. EPA and NYSDEC are scheduled to sign the final FPA on July 12, 1999. The FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/ProjectXL. The FPA addresses the eight Project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental performance superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) cost savings or economic opportunity, and/or decreased paperwork burden; (3) stakeholder support; (4) test of innovative strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application; (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; and (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden). The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

EPA is promulgating today's rule to implement the provisions of this Project XL initiative that require regulatory changes. However, as discussed in Section IV.F. below, New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in today's rule will not take effect in New York State until the State adopts equivalent requirements as State law, and EPA will not be the primary regulatory agency responsible for implementing the requirements of this rule. Although today's rule references ''EPA,'' ''NYSDEC'' will be substituted for ''EPA'' when the State adopts these requirements as State law. For this reason, this preamble discussion will use the term ''regulatory agency'' when referring to the ''EPA'' responsibilities identified in today's rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding state law change that will actually govern this XL project.

2. NYSDEC XL Project Description

Utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles. Frequently, hazardous waste is generated at remote locations that are not continuously staffed. The collection of the hazardous waste is sometimes planned in advance, but often is not, particularly in cases where there has been a sudden, unexpected interruption of service. Waste may also be generated as part of routine service. This waste generally consists of sediments accumulating at Utility access points.

In the case of electric power and telephone systems, the locations involved are usually transformer vaults, service boxes, and manholes, which are most often located in the middle of public roads. In order to access conduits and service the system, sediment and/or infiltration water must be removed. These materials commonly fail the Toxicity Characteristic (TC) for lead and therefore may be hazardous waste. For electric power systems, polychlorinated biphenyl (PCB) contamination is also possible. Waste containing PCBs is regulated under the Toxic Substances Control Act (TSCA). In the case of oil and gas pipelines, the waste may consist of pipeline condensate which collects in ''drip'' pipes downstream of pressure regulating stations. This waste commonly exhibits the characteristic of ignitability, commonly fails the TC for benzene and may contain PCBs.

Generally, hazardous waste may qualify for conditional exemption under RCRA because it is generated in quantities less than 100 kilograms per calendar month. However, when hazardous waste generated exceeds 100 kilograms per calendar month, it is subject to applicable regulations at 40 CFR part 262. In addition, when one kilogram or more of an acutely

hazardous waste is generated per calendar month at a remote location, it is also subject to applicable regulations at 40 CFR part 262.

Utilities are currently allowed to accumulate hazardous waste without a permit at the remote location where it is generated for up to 90 days (or, under certain circumstances, 180 days) without RCRA permits prior to transporting it to a permitted treatment, storage and disposal facility (TSDF) or other designated facility. However, since remote Utility locations are often unstaffed, it is very difficult to store hazardous waste and secure against releases resulting from accidents or vandalism. Arranging to bring hazardous waste directly to a TSDF may take several days, particularly if the event was unplanned. To enhance protection of public health, safety, and the environment, it would be preferable if hazardous waste generated at remote locations were transported to a secured location as soon as it is collected from the remote location.

RCRA regulations generally do not allow the shipment to, or consolidation of, hazardous waste at off-site facilities other than a permitted or interim status TSDF or other designated facility. Furthermore, for each remote location that generates more than 1,000 kilograms during any single month, the utility must prepare and submit a Biennial Report. The RCRA-authorized state processes each report and enters the data into state databases, and EPA enters it into the Biennial Report System (BRS) database. As a result, both state and federal databases include hundreds of ''sites'' which are actually only drip pipes and/or manholes.

Additionally, utilities must arrange frequent shipments of small loads of hazardous waste which must be sent directly to a permitted TSDF, which is often located hundreds of miles from the remote location. The current handling of hazardous waste at remote locations may result in unsafe storage and hazardous conditions, additional paperwork and expenditure of time and labor, and inefficiencies in transportation, increasing direct costs.

Utilities would prefer to transport hazardous waste immediately from remote locations to a UCCF so that hazardous waste does not remain susceptible to releases from the remote locations through accidents or vandalism. At the secured UCCFs , the Utilities could then safely combine compatible types of hazardous waste collected from different remote locations to achieve important efficiencies in transportation and waste management. By consolidating hazardous waste in this manner, vehicles transporting waste from a UCCF to a commercial TSDF could then carry relatively full loads. On the other hand, if hazardous waste must be transported to a TSDF directly from remote locations, more vehicle trips, often hundreds of miles away, would be required, each carrying smaller loads.

This rule is designed to address the problems of unsafe storage, transportation inefficiencies, and unnecessary paperwork in the following ways:

a. Hazardous waste generated at a Utility's remote locations can be consolidated without a RCRA permit for up to 90 days at a UCCF, so long as the Utility complies with requirements set forth in today's rule. Each UCCF can only consolidate waste generated at its remote locations and at the UCCF itself. Hazardous waste generated at a remote location would be transported from each remote location immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. If wastes arriving at the UCCF on different dates are consolidated in the same unit, the 90-day period will run from the earlier of the two dates that the wastes arrived.

b. Hazardous waste generated at remote locations that is transported to a UCCF can be accounted for in a combined Biennial Report, submitted by the Utility, instead of the Utility having to submit a Biennial Report for each remote location. A separate Biennial Report must be prepared for hazardous waste sent from a remote location directly to a permitted TSDF that would ordinarily require a Biennial Report.

Thus, under the rule a UCCF would be able to consolidate hazardous waste received from remote locations at the UCCF for up to 90 days, thereby providing the Utilities with more flexibility to combine compatible hazardous wastes generated at different remote locations, prior to having to ship such waste to a treatment, storage, or disposal facility.

In order to participate in the flexibility provided by the rule, New York State Utilities must initiate and comply with public notice and participation requirements set forth in the rule regarding the designation(s) and approval of UCCF(s). In addition, the regulatory agency must respond to the comments received regarding the designation(s) and approval of UCCF(s). Subsequent to these public participation procedures, Utilities must receive approval to participate in the flexibility provided by this rule. The regulatory agency may determine that a Utility or UCCF should not be approved to participate based on relevant information learned before, during or after the public notice procedures, including a Utility's compliance history.

The rule will enhance the protection of public health and the environment by facilitating and requiring the more immediate removal of hazardous waste that is difficult to properly secure at remote locations to staffed and secure UCCFs. Hazardous traffic conditions that endanger public safety may also diminish. Once hazardous waste is transported to a UCCF it will be subject to a number of requirements, including that it must be held in units that are managed in accordance with specified requirements in 40 CFR part 265. In order to operate a UCCF under the terms of today's rule, utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, if the regulatory agency determines that the requirements identified in this rule may not fully protect human health and the environment, it may impose additional conditions on the operation of a particular UCCF.

Utilities should realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made to often-remote TSDFs by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports should bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory agencies, who can then redirect such resources to other environmental needs.

In addition, the rule requires Utilities to reinvest at least one-third of the direct savings realized from participation in the XL project into one or more environmental projects, such as pollution prevention, that are over and above existing legal requirements and that were not planned prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to the rule.

The rule applies only to hazardous waste at a Utility's remote locations or at a UCCF. This rule does not allow a UCCF to receive waste from locations other than remote locations that are within the same right-of-way network as the UCCF. In addition, except as explicitly provided for in the rule, the rule does not affect any other requirements pertaining to the storage, transport, and disposal of waste generated at a Utility's remote locations. For example, a Utility is still required to

determine whether waste generated at a remote location is subject to the land disposal restrictions set forth in 40 CFR part 268 and the Toxic Substances Control Act and its implementing regulations set forth in 40 CFR part 761 at the point of generation, prior to any commingling of waste. In addition, nothing in the rule prohibits a Utility from treating hazardous waste in a tank or container pursuant to the provisions set forth in § 262.90 provided the Utility complies with the requirements for tanks set forth in subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200, and/or the requirements for containers set forth in subpart I of 40 CFR part 265.

Similarly, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of this rule once it is received at the UCCF. The Utility must comply with 40 CFR 262.34(a)–(c) (requirements for large quantity generators) for all hazardous waste consolidated at the UCCF regardless of the total amount of waste generated or consolidated per month at the UCCF.

3. Environmental Benefits

This XL project facilitates the immediate transport of hazardous waste, generated by Utilities at ''remote'' locations that are not permanently staffed, to a secured location that is subject to the enhanced requirements established by today's rule. At the present time, particularly when the collection of hazardous waste is unplanned, it may take several days to make arrangements for removal of the material directly to a TSDF. In the meantime, if the material remains at the remote location, it may endanger public health and the environment because it may be difficult for the Utility to provide secure storage for the material, safe from releases through accidents or vandalism. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), public safety is threatened, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Leaving the material at a street location may result in forced merging of high-volume traffic lanes. This project should help to enhance public safety and prevent endangerment to human health and the environment.

There should also be direct environmental results to be realized from the consolidation of compatible waste at UCCFs. By minimizing the number of vehicle trips that must be made to the often-distant TSDF, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste.

Indirect environmental benefits should result from the reduced need for human resources, time and paperwork. More Utility and regulatory agency resources would be made available to address higher priority environmental issues.

In addition, participating Utilities are required to reinvest one-third of the direct cost savings accrued due to participation in this project into one or more environmentally beneficial projects that are above and beyond what is legally required by law and that were not planned prior to receipt of approval of each UCCF. Participating Utilities must identify, in annual Progress Reports, the monetary value of the direct cost savings which they have experienced as a result of the project and the environmental activities in which one-third of these direct cost savings have been reinvested.

4. Economic Benefits

Utilities should realize direct cost savings. Through the need for reduced resources, time and paperwork, they also anticipate indirect savings. NYSDEC and EPA will realize indirect savings through reduced resource demands, time saved (including computer time), and reduced paperwork.

Utilities should realize a variety of direct cost savings. First, Utilities will not incur expenses for having to store hazardous waste at remote locations, even temporarily. Second, Utilities will realize direct cost savings through efficiencies in transportation. By being able to combine waste at the UCCF that is compatible, fewer vehicle trips to ultimate destination facilities will be required. These savings may include: database management for each remote location as an individual generator, State annual Hazardous Waste Report preparation costs, Biennial Report preparation costs, and cost savings realized from consolidation of waste for economical shipment (including no longer sending waste directly to a TSDF from a remote location.). The proposed rule explicitly identified as reportable cost savings, cost savings achieved as a result of not being required to obtain a TSDF permit or comply with substantive TSDF requirements. It is EPA's understanding, however, that in the absence of today's rule, utilities would probably continue to comply with the existing requirements for hazardous waste generators rather than obtain a permit for a UCCF. Thus, EPA does not generally expect these savings identified in the proposed rule to result from this project. Accordingly, EPA has modified the proposed rule by deleting the explicit references to these types of savings. Instead § 262.90(h) includes a more general request for cost savings achieved by a particular utility, thus ensuring that all cost savings based on any regulatory requirements which a particular utility is actually relieved from due to compliance with today's rule will be accounted for in its estimate of cost savings. EPA believes that this is a more appropriate approach given that the specific cost savings for each utility are difficult to precisely anticipate and are based in large part on the operating decisions a particular utility may make when faced with the options that still exist in the absence of this XL project.

Utilities will realize indirect savings in resources, time, and reduced paperwork by not having to submit separate Biennial Reports for each remote location that generates in excess of 1,000 kilograms of hazardous waste per calender month. Instead, the hazardous waste generated at remote locations will be included in the Biennial Reports of the UCCFs to which they are brought. All such hazardous waste will still be fully accounted for without increasing the number of Biennial Reports that the Utility must prepare and submit. EPA and NYSDEC will also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Biennial Reports for remote locations will no longer need to be processed and entered in state and federal databases. As long as the quantities and types of hazardous waste from these locations are accounted for, the minimal benefits of these excess reports do not justify the extra work involved in preparing and processing the reports.

5. Stakeholder Involvement

NYSDEC and EPA have been involved in the development of this project, and

both support it. Bell Atlantic acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

The development of the FPA was accomplished through implementation of a Public Participation and Outreach Plan, which is included in the docket for this rulemaking. This Plan provided opportunity for participation by potential industrial participants, environmental organizations, the general public and other interested parties. The rule and FPA also provide for public participation in the designation and approval of UCCFs.

Finally, the NYSDEC intends to propose and (subject to public comment) promulgate an equivalent state regulation.

6. Project Duration and Completion

As with all XL projects testing alternative environmental protection strategies, the term of the NYSDEC XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be 60 months from the effective date of this rule. However, a participating UCCF or Utility may be terminated or suspended at any time for failure to comply with any of the requirements of the rule.

C. Rule Description

The rule adds a new section to the Standards Applicable to Generators of Hazardous Waste, 40 CFR 262.90. Paragraph (a) of the rule defines terms used in the new rule. The definition of remote location in paragraph (a)(3) is of particular interest because of its importance in the implementation of the regulation. Paragraph (b) includes the requirements that a Utility and UCCF will comply with in order to consolidate hazardous waste for up to 90 days at the UCCF. For example, under § 262.90(b)(1), the utility is required to use a Uniform Hazardous Waste Manifest (Form 8700–22) for all shipments of hazardous waste greater than 100 kilograms being sent from a remote location to a UCCF. The manifest used to transport hazardous waste from the remote location to the UCCF will be prepared as follows:

(1) The EPA ID # of the UCCF would be entered on the Manifest Form in Item 1.

(2) The name and location of the remote location would be entered in the Generator's Name and Mailing Address block (Item 3).

(3) The transporter's name and EPA ID number would be entered in the Transporter 1 Company Name box (Items 5 and 6).

(4) The UCCF name would be entered in the Designated Facility Name and Site Address (Item 9) as the facility which will be handling the waste described on the manifest.

(5) The DOT description and other information about the waste would be entered in Items 11 through 14.

(6) The Generator's Certification (Item 16) would be signed.

(7) The Transporters Acknowledgment of Receipt (Item 18) would be signed.

(8) The person accepting the waste on behalf of the UCCF would sign the Certification of receipt of hazardous materials covered by this manifest (Item 20).

(9) A copy of the manifest, signed by all required signatories, must be retained at the UCCF for a minimum of three years. A copy of the manifest must also be provided to the transporter, if other than the utility.

The utility would also complete a new manifest in accordance with 40 CFR 262.20, for all hazardous waste transported to a TSDF from the UCCF.

EPA has modified the rule to consistently refer to a Utility's waste handling activities as ''consolidation.'' The proposed rule and its accompanying preamble interchangeably used the terms ''accumulate'' and ''consolidate'' to refer to Utility waste handling activities. EPA has modified the rule to uniformly refer to ''consolidation'' because that term more accurately reflects the range of activities that a Utility will carry out under this project. The activities that a Utility will carry out include, collecting hazardous waste from multiple remote locations, transporting the collected hazardous waste to a designated UCCF, keeping that hazardous waste at the UCCF for up to 90 days, and combining, where feasible and appropriate, physically and chemically similar hazardous waste.

Paragraph (c) of the rule requires public notification of a Utility's and UCCF's participation. These requirements ensure that there is adequate public notice and comment on participation. Paragraph (d) includes items that need to be included in a notification of participation that would be sent to the regulatory agency. Paragraph (e) describes the procedures for designating UCCFs, including how information from the public comments will be incorporated in the approval process. Paragraph (f) includes requirements for the addition or deletion of UCCFs from participation. Paragraph (g) includes the requirement that a participating Utility submit an Annual Progress Report, including information on the number of remote locations, the total tonnage of each type of waste handled, and savings reaped from participation. Paragraph (h) requires a Utility to assess any direct savings that result from its participation in the project, and sets forth examples of the direct savings that a Utility may experience as a result of participation. Paragraph (i) discusses grounds for termination of a Utility or UCCF's participation. Paragraph (j) sets forth the expiration date of the rule. Amendments to parts 264, 265, and 270 clarify that a UCCF operating in accordance with the requirements of 40 CFR 262.90 is exempt from TSDF and permitting requirements.

EPA has made several changes to the proposed rule in response to comments. These are: (1) A clarification regarding when hazardous waste must be transported from a remote location to a UCCF; (2) a clarification regarding whether the UCCF may also consolidate hazardous waste generated at the UCCF under the terms of this rule; (3) additional requirements applicable to containers of hazardous waste; (4) additional public notice and public participation requirements; and (5) an additional reporting requirement for participating utilities. Each of these changes is discussed in detail in section III below.

III. Response to Public Comments

A. Public Comments Received

On December 7, 1998, EPA requested comments on the proposed rule and draft Final Project Agreement for the NYSDEC XL project. See 63 FR 67561. As a result of this **Federal Register** document, EPA received four comments: one from Consolidated Edison Company of New York, Inc., (ConEd), one from the Utility Solid Waste Activities Group (USWAG), one from Niagara Mohawk, and one from the Atlantic States Legal Foundation (ASLF) (joined by New York Rivers Unlimited, Great Lakes United, and the New York Public Interest Research Group).

1. ConEd Comment

ConEd supports the NYSDEC XL project because it believes that the

project will achieve better environmental results at less cost. It believes that these cost savings will result from unnecessary paperwork reductions, the consolidation of waste, and cost reductions from allowing UCCFs to operate under certain conditions without obtaining TSD permits and maintaining TSD facilities. In its comment, ConEd also extols the environmental benefits of the project which it identifies as the reinvestment of cost savings in environmentally beneficial projects, the expedited removal of waste, and the reduction in vehicle trips through the consolidation of waste. ConEd suggests that EPA clarify whether UCCFs may handle hazardous waste generated at the UCCF as well as hazardous waste generated at remote locations. ConEd points out that, although the proposed rule suggested that a UCCF could handle both remote location hazardous waste and UCCF generated hazardous waste, a statement in the preamble to the proposed rule suggested that each UCCF could only handle waste generated at its remote locations. EPA agrees that this issue should be clarified. EPA's intent with the proposed rule was that each UCCF would handle both the hazardous waste generated at its remote locations as well as hazardous waste generated at the UCCF. EPA's statement in the preamble to the proposed rule was not meant to suggest that UCCFs would not be able to handle UCCF-generated hazardous waste, but rather to clarify that a UCCF would not be allowed to receive hazardous waste from any off-site location other than a remote location. EPA has modified § 262.90(b) to clarify that UCCFs may consolidate, under the terms of this rule, hazardous waste generated at remote locations and hazardous waste generated at the UCCF itself. The Utility must comply with the requirements of 40 CFR 262.34(a)–(c) (requirements for large quantity generators), regardless of the total quantity of waste generated or consolidated each calender month (see, § 262.90(b)(4)(i)).

2. USWAG Comment

USWAG is an informal consortium of the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, and about 80 electric utilities located throughout the country. In its comment, USWAG states that (1) ''the current hazardous waste reporting and waste consolidation rules are inefficient and increase costs when applied to electric utility individual 'remote locations;' '' (2) ''the NYSDEC Project XL will provide regulatory flexibility and costs savings to electric utilities by reducing the paperwork burdens and waste consolidation restrictions under the current hazardous waste rules;'' and (3) ''the NYSDEC Project XL will not only maintain the same levels of environmental protection and public safety under existing rules, but will facilitate their improvement.'' USWAG, like ConEd, requests that EPA clarify that hazardous waste generated at a UCCF can also be consolidated at the UCCF in accordance with the terms of this XL rule. As discussed above, EPA agrees and has clarified § 262.90(b) of the rule accordingly. USWAG also requests that EPA clarify the meaning of the term, ''generation event.'' USWAG suggests that a ''generation event'' ends when the utility has completed the removal of the hazardous waste from inside the manhole, oil or gas pipeline, or other remote location. EPA agrees that the term ''generation event'' should be clarified. One of the purposes of this XL project is to improve the existing situation in which hazardous waste generated at an unstaffed or unsecure remote location can remain at that site, unsupervised, for extended periods of time. Thus, EPA's intent with this rule is that waste that is collected from a manhole or other remote location will not remain at a remote location where it might be unsupervised prior to being transferred to a UCCF. In light of this comment, EPA believes that use of the term ''generation event'' is insufficient to indicate when hazardous waste must be transferred from a remote location to the UCCF. EPA has modified the rule to clarify that hazardous waste must be transferred from the remote location to a UCCF immediately following collection of all hazardous waste at the remote location or when the staff collecting the hazardous waste leave the remote location, whichever comes first. This approach will ensure that hazardous waste that is collected at a remote location is never left unsupervised and that it does not unnecessarily remain on-site for extended periods of time. For example, if it takes Utility workers several days to collect all the hazardous waste at a remote location, but the workers leave the remote location at the end of each day, the hazardous waste collected during the course of the day will have to be transported to the UCCF when the workers leave the remote location. Alternatively, hazardous waste must be transported to the UCCF once all the hazardous waste at the remote location has been collected, even if utility staff remain at the remote location.

In addition, USWAG requests that EPA ''consider eliminating the requirement that remote locations comply with the identification number and manifesting requirements in order to further reduce unnecessary, time-consuming and costly paperwork burdens.'' EPA did not intend that each remote location would be required to have an individual identification number under this project. Rather, under this project, the identification number of the UCCF will also be used by its remote locations (see, section II.C. above). With respect to the manifesting requirements, EPA does not consider the manifest requirements of 40 CFR part 262, subpart B (incorporated by reference in today's rule) to be unnecessary. Hazardous waste generated at remote locations and transported to a UCCF will be traveling on public roads, and thus EPA believes that the tracking and emergency response functions served by these requirements are still necessary. Moreover, this project is focused on experimenting with flexibility regarding hazardous waste consolidation, not flexibility with regard to manifest preparation.

3. Niagara Mohawk Comment

In its comment, Niagara Mohawk supports the initiative proposed by this rule and asserts that it will provide substantial regulatory relief to the utility industry while reducing environmental impact. However, Niagara Mohawk believes that the rule contains two requirements that are disincentives to participation. First, it believes that the public notice requirements are excessive. Specifically, Niagara Mohawk asserts that placing a public notice in a newspaper of local circulation should be sufficient and that two additional outreach methods are unnecessary. EPA disagrees. Stakeholder involvement is one of the criteria for XL projects. The provision of two methods of public notice in addition to a public notice in the newspaper will help to ensure that all interested members of the community will be aware of, and able to participate in the process of designating UCCFs. Second, Niagara Mohawk requests a utility exemption from the need to obtain a permit under 6 NYCRR part 364. Niagara Mohawk is referring to a New York State requirement that a transporter of hazardous waste obtain a permit. This requirement is a state-only requirement and can be addressed by NYSDEC. It is not appropriate for EPA to address this issue in this federal rulemaking.

4. ASLF Comment

ASLF agrees that the portion of the project pertaining to RCRA identification numbers and biennial reports will achieve RCRA objectives in a superior manner while achieving cost savings. ASLF does, however, raise a number of concerns regarding the consolidation of remote location hazardous waste at a UCCF.

a. RCRA Permits

ASLF asserts that RCRA section 3005(a) requires that a UCCF obtain a permit before it can accept waste from a Utility remote location. EPA disagrees. RCRA section 3005(a) requires treatment, storage, and disposal facilities (TSDFs) to obtain permits. RCRA section 3002 establishes separate requirements for generators. Thus, the statute clearly recognizes that generators and TSDFs are separate classes of regulated entities subject to different regulatory regimes, although it does not clearly specify where the line between these classes of regulated entities is drawn. Specifically, it does not identify at what point a generator's waste handling activities become ''treatment'' or ''storage'' under the statute such that the generator becomes a TSDF. EPA believes it is clear that some amount of waste handling by a generator must fall outside the scope of the RCRA TSDF requirements; otherwise, virtually every generator in the country would also be a TSDF and the distinction between the two classes of regulated entities would be meaningless. EPA does not believe that Congress intended that every entity in the country that generates hazardous waste become a TSDF subject to the requirement to obtain a RCRA permit.

In the case of hazardous waste generated at Utility remote locations and consolidated at a central collection facility, EPA believes it is inappropriate to require a UCCF to obtain a permit because it is not acting as a TSDF. Rather, the consolidation of remote location hazardous waste at the UCCF is an activity that is incidental to the Utility's operations. As discussed previously, the purpose of consolidating hazardous waste at the UCCF prior to transportation to a TSDF is to ensure that remote location hazardous waste is not left in an unsecured, unstaffed location and to achieve transportation efficiencies. These are issues that the Utilities face as generators of hazardous waste. For this reason, EPA believes that RCRA does not prohibit the participating Utilities from consolidating remote location hazardous waste for up to 90 days at a UCCF without a TSDF permit. In addition, EPA believes that the procedural and substantive requirements that participating Utilities will have to comply with in order to consolidate remote location waste at a UCCF ensure the protection of human health and the environment. These requirements include that hazardous waste can only be held at a UCCF for a limited duration (up to 90 days) and such waste must be held in units that are managed in accordance with specified technical requirements in 40 CFR part 265, as well as with additional requirements for closure and secondary containment of containers. Utilities will also have to comply with personnel training, contingency planning, and other emergency preparedness and prevention requirements, and they will be subject to both general and unit-specific closure requirements. In addition, the regulatory agency may impose additional conditions on the operation of a particular UCCF if it determines that the requirements identified in this rule may not fully protect human health and the environment. Finally, the designation of a particular UCCF is subject to public notice and comment (including the opportunity for a public meeting if the regulatory agency determines such a meeting is warranted) and must be approved by the regulatory agency. If the regulatory agency believes that the designation of a UCCF will not ensure protection of human health and the environment, the UCCF will be rejected as provided for in § 262.90(e)(4).

This limited exemption is, in fact, necessary in order to provide utilities with the incentive to more immediately remove hazardous waste generated at unstaffed remote locations. If permitting were required, utilities who permitted their facilities would incur high transaction costs as a result of lengthy permitting procedures and high state permitting fees. Utilities have not found permitting of these facilities to be cost-effective, and utilities are thus unlikely to permit them. As a result, waste is generally sent to non-utility-owned permitted facilities. Because utilities await authorization from these TSD facilities prior to transport, the waste remains at the remote location for several days. EPA is entering into this project to experiment with ways to avoid this situation and allow waste to be removed from remote locations faster. In fact, this project idea was initiated when three utilities independently expressed concern to New York State that the storage of hazardous waste ''on-site'' at remote locations was a problem in terms of potential liability, traffic disruption, accidental releases and attendant environmental damage, and vandalism.

ASLF also asserts that the Agency has reopened the issue of its authority to exempt 90-day generator on-site accumulation units from the RCRA permit requirement. EPA disagrees. EPA has never indicated in any way that it intended to reconsider the existing regulatory provisions for the on-site accumulation of hazardous waste. EPA did not propose to amend or otherwise modify the existing provisions for on-site accumulation of hazardous waste, nor did the Agency solicit comment on these provisions. Today's rule is limited to the off-site consolidation of hazardous waste for a limited class of hazardous waste generators. It does not in any way affect the existing requirements for on-site accumulation of hazardous waste.

1. Utility-owned Rights-of-Way and Remote Locations

ASLF states that the rule excludes from ''permitting a storage or treatment facility simply because it is located along a utility right-of-way, and would thereby regulate the entire right-of-way as if it were one onsite individual generation location,'' and concludes that the rule extends the current provisions for on-site accumulation beyond their limits. EPA disagrees. Today's rule is not intended to treat a utility right-of-way as one site (see, e.g., § 262.90(b)(1) which requires participating utilities to manifest hazardous waste shipments from a remote location to an off-site UCCF). EPA did not include the notion of the Utility right-of-way in today's rule for any reason other than to limit the waste a UCCF may receive. By linking the definition of ''remote location'' to a Utility's right-of-way network, the rule ensures that a UCCF may only receive waste generated by that Utility at predictable and expected locations. Finally, today's rule is not intended to be an ''extension'' of the existing provisions for on-site accumulation, rather it is a distinct set of requirements under which participating Utilities can consolidate remote location waste at off-site UCCFs.

ASLF further states that some ''rights-of-way may include hundreds of miles of rural areas where the utility may actually own (or operate) little or none of the land'' and that concepts of contiguous ownership inherent in EPA's definition of ''facility'' are disregarded. As discussed above, today's rule is not intended to treat a Utility right of way as one site or one facility.

2. Small Quantity Generator Exclusion

ASLF notes that this rule does not modify the small quantity generator exclusion threshold for individual remote locations, and asserts that this is inconsistent with otherwise regulating ''the entire right-of-way as one collective onsite generator location.'' As discussed above, this rule does not regulate a right-of-way as one site. In addition, it is not the intent of the rule to subject Conditionally Exempt Small Quantity Generator waste (i.e., hazardous waste that does not exceed 100 kilograms per calender month) generated at individual remote locations to increased regulation. Thus, a Utility may continue to follow the requirements for Conditionally Exempt Small Quantity Generators (CESQGs) at 40 CFR 261.5 for CESGQ waste generated at individual remote locations that is not sent to a UCCF. If, however, a Utility chooses to send CESQG waste generated at individual remote locations to its UCCF, that waste will be subject to the requirements of § 262.90 (see 40 CFR 262.90(b)).

3. Quantity Limits

ASLF expresses concern that the rule does not include quantity limits restricting the consolidation of large quantities of waste at each UCCF, particularly because UCCFs may be located at or near population centers. EPA agrees that there may be circumstances where it will be necessary to limit the amount of hazardous waste that may be consolidated at a particular UCCF; however, EPA does not believe it is necessary to impose a universal limit on all UCCFs regardless of their particular circumstances. Instead, the rule provides that such restrictions may be imposed on a UCCF on a case-by-case basis at the time the UCCF is approved (see, 40 CFR 262.90(e)(3)). In addition, EPA has modified the rule to require the inclusion in the utilities' Annual Report of the total tonnage of each type of hazardous waste handled at each UCCF. This information will enable EPA to conduct reviews to determine whether the approach is working. If this experiment is later extended to the rest of the nation, the collection of this data will assist EPA in determining whether quantity limits should be imposed.

4. Substantive TSDF Requirements

ASLF voices concern that some of the substantive requirements applicable to permitted TSDFs would not apply to UCCFs. Specifically, ASLF highlights that a UCCF would not be subject to the following standards: (1) Secondary containment for container storage areas; (2) clean closure of container storage areas; and (3) facility wide corrective action. At the time of proposal, EPA did not consider additional requirements for containers because, given the types of hazardous waste generated at utility remote locations, it is unlikely that the utilities will be consolidating hazardous waste in containers. Upon consideration of ASLF's comment, however, EPA agrees that additional requirements for containers may be appropriate to include as part of this XL project in the event that containers are used to consolidate hazardous waste. As a result, EPA has included in today's rule a requirement for secondary containment of containers that is based on New York State requirements currently applicable to all generators (i.e., requirements that are not currently federal requirements). This requirement is that participating Utilities operating a UCCF that holds liquid hazardous waste in containers must provide secondary containment for those containers under two sets of circumstances: (1) If the UCCF is consolidating 8,800 gallons or more of liquid hazardous waste at any time; and (2) if the UCCF is consolidating 185 gallons or more of liquid hazardous waste at any time and is located in an area designated by New York State that overlays a sole-source aquifer (this would include, for example, areas in Brooklyn, Queens, and Long Island). In addition, EPA has incorporated the closure requirements of 40 CFR 264.178 for containers into today's rule. EPA does not, however, believe that it is appropriate to require corrective action because the purpose of today's rule is to provide flexibility so that utilities will have an incentive to quickly remove hazardous waste generated at remote locations to a secure location. Because facility-wide corrective action can be extremely expensive, imposing such a requirement would likely create a disincentive to the very behavior the Agency seeks to promote. Overall, EPA believes today's rule will result in hazardous waste management practices that provide a benefit of superior protection of human health and the environment as compared with current practices. In addition, if a UCCF is not operated in compliance with the terms of today's rule, it may be deemed a treatment, storage or disposal facility subject to enforcement or corrective action under RCRA section 3008 or section 3004. Furthermore, UCCFs participating in this project remain subject to enforcement or cleanup authorities under RCRA and other environmental statutes (e.g., RCRA section 7003, CERCLA section 106).

5. Public Participation

ASLF is also concerned that certain procedural rights associated with permitted facilities may not apply under this rule. In particular, ASLF expresses concern regarding (1) reduced public notice requirements at the time a facility is first proposed for designation; (2) lack of an opportunity to administratively appeal the approval of a facility; (3) lack of opportunity to review and comment on closure plans; and (4) no formal opportunity to seek modifications of an approval once it is issued. With respect to public notice requirements, EPA believes the types of public outreach required at the time that the UCCF is proposed are sufficient to ensure that all interested parties will be notified about a proposed UCCF. However, to further ensure that notice of a proposed UCCF designation is provided to all interested parties, EPA has modified the rule to ensure that the parties who commented on the proposed rule for this XL project are notified by a Utility when that Utility seeks approval for a particular UCCF. Today's rule also includes other requirements to ensure public involvement in the decision process for UCCFs. Utilities are required to respond to all of the comments that are submitted at the time that the UCCF is proposed. EPA has also modified the rule to clarify that the regulatory agency responsible for deciding whether to approve a particular UCCF will also respond to all of the comments submitted at the time that the UCCF is proposed, and consider these comments in determining whether or not to approve the UCCF, impose restrictions on the approval, or hold a site-specific meeting. EPA has also modified the rule to require that notification of the decision on whether or not to approve the UCCF be sent to each party that commented on the proposed designation.

ASLF expresses concerns about the lack of an opportunity to administratively appeal the approval of a facility. ASLF is correct that this rule provides no opportunity for administrative appeals following the regulatory agency's decision regarding designation of a UCCF; however, as part of this XL initiative there will be an annual opportunity for public input on the continued operation of a UCCF. As it does for all XL projects, EPA will be conducting annual evaluations of this project's progress. At the time of the evaluation, EPA will solicit public comment on how the project is progressing, and will contact all persons

who have expressed an interest in the project as a whole or in particular UCCFs. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project.

ASLF comments that it is unclear whether there will be an opportunity for judicial review of the regulatory agency's approval of a particular UCCF. As discussed in section II.B., NYSDEC will be the primary regulatory authority responsible for implementing the requirements of this rule and will therefore be the regulatory agency determining whether or not a UCCF may be approved to participate. Thus, the right to judicial review of the approval of a particular UCCF would be governed by the State Administrative Procedures Act.

ASLF expresses concern that there is no formal opportunity to seek modifications of a UCCF approval once it is issued. ASLF is correct that this rule will provide no formal opportunity for the public to request a modification of a UCCF approval. EPA notes, however, that there is also no formal opportunity for the public to request modification of a RCRA permit once it is issued. As discussed above, as part of this XL initiative, there will be an annual opportunity for public input regarding continued operation of a UCCF. Each year, EPA, using the annual reports that utilities are required to file with the regulatory agency as a starting point, will evaluate the progress of the project. EPA conducts this annual evaluation for all XL projects. At the time of the evaluation, EPA will solicit public comment on how the project is progressing. At this point in time, EPA will contact all persons who have expressed an interest in the project as a whole or in particular UCCFs. In addition, EPA will consider comments on a UCCF that are submitted at any time during the project. Where information provided by the public indicates a Utility or UCCF is not operating in compliance with today's rule, EPA or NYSDEC may consider taking appropriate enforcement action or terminating or suspending a Utility or UCCF from the project.

ASLF is also concerned about the lack of opportunity to review and comment on closure plans for UCCFs. In response, EPA wishes to clarify that there is no opportunity for public review on closure plans because utilities are not required to develop closure plans to participate in this XL project. Under today's rule, utilities are required to comply with general and unit-specific closure requirements, but they are not required to develop closure plans.

Finally, EPA notes that the appropriate baseline against which the environmental benefits of this project should be measured is the status quo, under which waste is accumulated at remote locations without any of these public participation opportunities. EPA does not believe that a comparison to the safeguards provided at permitted facilities is meaningful, since (with limited exceptions) the utilities have not chosen to obtain permits and are not required to do so.

b. Need for Flexibility Provided by Rule

1. Transfer Facilities and Other Existing Provisions

ASLF suggests that existing regulatory provisions, such as requirements for transfer facilities (where hazardous waste may be held for up to 10 days as part of the normal course of transportation) could be sufficient to deal with the problem identified in this rulemaking. ASLF also states that emergency identification numbers are available, and some utilities are licensed to transport the waste. EPA does not believe these options are generally sufficient to deal with the identified problems. First, none of these options help a utility to remove hazardous waste from a remote location more quickly if the only place that it can ultimately be transported to is a TSDF. Under current regulations, prior to transport to a TSDF or a transfer facility, a utility must complete a manifest, which includes identifying the name of the TSDF (regardless of whether the waste will be held at a transfer facility during the course of transportation to that TSDF). The requirements for holding hazardous waste at a transfer facility include that the hazardous waste be manifested. Since the waste cannot be taken to a TSDF or even manifested unless the TSDF grants its permission, utilities do not, in practice, transport the waste until authorization from the TSDF is received. Waiting for authorization from the TSDF can cause a delay of two to three days before the hazardous waste can be removed from the remote location. By allowing the utility to transport waste directly to the UCCF, this rule facilitates more immediate transport of the hazardous waste. Also, while waste may be held at a transfer facility for up to 10 days, the utilities have not found this time period to be long enough to provide a meaningful opportunity to consolidate the hazardous waste generated at remote locations so that the hazardous waste can be transported to a TSDF in a cost-effective manner. The reason that 10 days is insufficient is that utilities cannot predict how much waste will be removed from each remote location or how the hazardous waste generated at each remote location will combine to make an efficient load.

2. Utilities Could Obtain Permits

ASLF states that there is no evidence in the rulemaking record that utilities are unable to obtain a RCRA permit where necessary or advantageous to do so. ASLF states that utilities can obtain permits under current regulations so the flexibility provided by this rule is unnecessary. EPA disagrees with the assertion that the flexibility provided by this rule is unnecessary. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not because of the high cost of obtaining a permit and paying annual state permit fees.[1] This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. As discussed in section II.A., the overall purpose of Project XL is to experiment with untried, potentially promising regulatory approaches. EPA believes that this approach will accomplish faster removal of hazardous waste and result in superior environmental performance. The proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses this point has been included in the rulemaking record.

3. Delays in Securing Hazardous Waste Transporters

ASLF expresses concern that, to the extent that securing the services of a hazardous waste transporter is the cause of the delay in removing hazardous waste from a remote location, this project will not solve that problem. EPA has not found that the delay in removing hazardous waste from the remote locations is generally a result of

[1] There are currently five TSDFs operating under a RCRA permit and owned by a utility in all of New York State. However, not all utilities currently own or operate a permitted TSDF and of those that do, the TSDF may not be accessible to all of their remote locations. Whether a utility already owns or operates a TSDF will be an issue considered by the regulatory agency when it decides whether to approve a designation of a particular UCCF.

having to secure a licensed transporter, but rather of having to obtain authorization from the TSDF before that TSDF can be entered on the manifest (see (4)(b)(2) above). To the extent that securing a commercial transporter is a problem, this rule will address it because allowing the Utilities to transport waste to a UCCF will mean that Utilities could remove the waste immediately with their own licensed transporters.

4. Existence of Delays in Hazardous Waste Removal

ASLF comments that the rulemaking record does not contain any evidence that the delay in transporting hazardous waste from remote locations actually occurs and that there is no analysis of why a delay should ever occur. For an explanation of why this delay occurs, see section III. A.4.b.1. Regarding the rulemaking record, the proposed rule was developed based on EPA's understanding from communications with NYSDEC and various New York State utilities. Confirmatory information supporting this final rule that addresses these points has been included in the rulemaking record.

5. Streamlined Permits

ASLF questions why EPA did not consider an option of a streamlined permit for UCCFs because streamlined permitting in general is being considered by EPA's Office of Solid Waste. Under Project XL potential participants are invited to develop *their* proposals for common sense, cost-effective strategies that will replace or modify specific regulatory requirements and result in superior environmental benefits. Project XL is intended to allow EPA to experiment with these proposals to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. In this case, several Utilities and NYSDEC proposed this approach to EPA. This approach provides a commonsense way to ensure the fast removal of hazardous waste from remote locations. Because of the hazards involved in leaving the waste at the remote locations, EPA has determined that this project is beneficial to human health and the environment and is worth evaluating as an alternative to the existing system.

c. Environmental Benefits

ASLF also expresses concern over the environmental benefits of the project. ASLF states that the immediate removal of hazardous waste from remote locations is not derived from the exemption from permitting requirements for UCCFs. EPA disagrees. As discussed above, nothing currently prevents utilities from leaving hazardous waste at unstaffed, unsecured remote locations. In fact, there is generally, a two to three day delay in the transport of the hazardous waste from the remote locations (after all the hazardous waste is collected) because utilities wait for TSDF authorization prior to listing the TSDF on the manifest and transporting the waste. While utilities may obtain permits for UCCFs under current regulations, in practice they generally do not. This project is an experiment to determine if an alternate regulatory approach can create incentives for utilities to expedite the removal of hazardous waste from remote locations and to achieve transportation efficiencies. ASLF questions the amount of environmental benefits resulting from the consolidation of waste resulting in fewer vehicle trips. While EPA does not consider this environmental benefit in of itself to constitute superior environmental performance, EPA believes that a reduction in vehicle trips does create some environmental benefit. EPA considers all of the environmental benefits as a whole when deciding whether a project achieves superior environmental performance. ASLF also expresses concern that the utilities may choose the environmental projects. EPA views this as one of the areas of experimentation under this project. Because utilities know their facilities and operations better than EPA, they should know where they can achieve the greatest environmental benefit. Thus, EPA is experimenting with giving the utilities discretion to choose the best environmental projects for their particular facilities. These environmental projects, as well as the amount of money spent, must be described in the utilities' annual reports. As discussed above, as in all XL projects, EPA will solicit public comment on the project when it evaluates the annual reports. EPA will consider these comments in determining whether the approval of individual UCCFs and the project as a whole provide sufficient environmental benefits. In addition, if the regulatory agency finds that the environmental projects are a sham, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF also expresses concern that the determination of whether an environmental project is otherwise required by law is subject to interpretation. EPA believes that the regulatory agencies have the knowledge and expertise to determine whether a particular environmental project is otherwise required by law. If a Utility chooses a project that it is otherwise required to do, the regulatory agency has the authority to terminate a UCCF's approval or a utility's participation in this project.

ASLF is concerned that there is no opportunity for public input into the areas of reinvestment chosen by the utilities. EPA disagrees. The public may provide suggestions to the utilities about the environmental projects chosen by the utilities at any time. In addition, when EPA conducts its annual evaluation of this project, it will solicit public input on the benefit of the environmental projects chosen by the utilities. All information received from the public will be included in EPA's annual evaluation of the project. EPA will also provide this information to NYSDEC and the relevant utilities.

IV. Additional Information

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. EPA believes that in determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the required analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed [or final] rule on small entities.'' 5 U.S.C. 603 and 604. Thus, EPA may certify as not having a significant economic impact on a substantial number of small entities rules that relieve regulatory burden, or otherwise have a positive economic effect on the small entities subject to the rule. EPA has concluded that today's rule will relieve regulatory burden for all types of entities, including any affected small entities. Further, today's rule does not impose any requirements on any utility unless the utility opts to participate and receives approval to participate. Therefore, EPA certifies today's rule is unlikely to have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 10, 2000.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010–0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number or regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA/HSWA

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) States with final

authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on New York State Authorization

Today's rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law. It is EPA's understanding that subsequent to the promulgation of this rule, New York State intends to propose a rule containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. Applicability of Executive Order 13045

The Executive Order, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous waste, Recordkeeping requirements.

Dated: July 1, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 9, 262, 264, 265, and 270 of title 40 of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * * * *	
Standards Applicable to Generators of Hazardous Waste	
* * * * * * *	
262.90(c), (d), (f), (g)	2010–0026
* * * * * * *	

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Subpart I consisting of § 262.90 is added to read as follows:

Subpart I—New York State Public Utilities

§ 262.90 Project XL for Public Utilities in New York State.

(a) The following definitions apply to this section:

(1) A *Utility* is any company that operates wholesale and/or retail oil and gas pipelines, or any company that provides electric power or telephone service and is regulated by New York State's Public Service Commission or the New York Power Authority.

(2) A *right-of-way* is a fixed, integrated network of aboveground or underground conveyances, including land structures, fixed equipment, and other appurtenances, controlled or owned by a Utility, and used for the purpose of conveying its products or services to customers.

(3) A *remote location* is a location in New York State within a Utility's right-of-way network that is not permanently staffed.

(4) A *Utility's central collection facility (UCCF)* is a Utility-owned facility within the Utility's right-of-way network to which hazardous waste, generated by the Utility at remote locations within the same right-of-way network, is brought.

(b) A UCCF designated pursuant to paragraph (e) of this section may consolidate hazardous waste (with the exception of mixed waste) generated by that Utility at its remote locations (and at that UCCF) for up to 90 days without a permit or without having interim status, provided that:

(1) The Utility complies with all applicable requirements for generators in 40 CFR part 262 (except § 262.34 (d) through (f)) for hazardous waste generated at its remote locations and at the UCCF, including the manifest and pretransport requirements for all shipments greater than 100 kilograms sent from a remote location to a UCCF.

(2) The Utility transports the hazardous waste from the remote location to a UCCF immediately after collection of all hazardous waste at the remote location is complete or when the staff collecting the hazardous waste leave the remote location, whichever comes first.

(3) The Utility complies with all applicable requirements for transporters in 40 CFR part 263 for each shipment of hazardous waste greater than 100 kilograms which is sent from remote location to the UCCF, and all applicable Department of Transportation requirements.

(4) (i) The Utility complies with 40 CFR 262.34 (a) through (c), regardless of the total quantity of hazardous waste generated or consolidated at the UCCF per calendar month;

(ii) The Utility complies with 40 CFR 264.178; and

(iii) Secondary containment is provided for all liquid hazardous waste consolidated in containers if:

(A) The UCCF is consolidating 8,800 gallons or more of liquid hazardous waste, or

(B) The UCCF is consolidating 185 gallons or more of liquid hazardous waste and is located in an area designated by New York State that overlays a sole-source aquifer.

(5) The Utility submits a biennial report in accordance with 40 CFR 262.41 including all hazardous waste shipped from remote locations to the UCCF. This UCCF biennial report may be submitted in lieu of submitting a biennial report for each remote location. However, for hazardous waste generated at a particular remote location that exceeds 1000 kg per calendar month and that is not sent to the UCCF, the Utility must submit a separate biennial report.

(6) Waste generated at a remote location that is not sent to a UCCF is managed according to the requirements of parts 260 through 270 of this chapter.

(7) The Utility maintains records at the UCCF in accordance with all the recordkeeping requirements set forth in subpart D of 40 CFR part 262, including 40 CFR 262.40, and maintains records on any PCB test results for hazardous wastes brought to the facility from remote locations.

(8) The UCCF obtains an EPA identification number.

(9) The UCCF receives hazardous waste only from its remote location.

(10) The Utility reinvests at least one-third of the direct savings described in paragraph (h) of this section in one or more environmentally beneficial projects, such as remediation or pollution prevention, that are over and above existing legal requirements and

that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(c) Utilities seeking to have UCCFs designated under paragraph (e) of this section must comply with the following requirements:

(1) Any New York State Utility seeking approval to consolidate hazardous waste under this section must notify local governments and communities of the Utility's intent to designate specific UCCFs.

(2) In carrying out paragraph (c)(1) of this section, the Utility must solicit public comment. In soliciting public comment, the Utility must use the notice method set forth in paragraph (c)(2)(i) of this section, as well as at least two of the methods set forth in paragraphs (c)(2)(ii) through (vii) of this section. Each Utility must also notify by mail all parties who commented on the proposed rule for this XL project.

(i) A public notice in a newspaper of general circulation within the area in which each proposed UCCF is located;

(ii) A radio announcement in each affected community during peak listening hours;

(iii) Mailings to all citizens within a five-mile radius of proposed UCCF;

(iv) Well-publicized community meetings;

(v) Presentations to the local community board;

(vi) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section in the local library nearest the proposed UCCF, and inclusion of the name and address of the library in the newspaper notice; and

(vii) Placement of copies of this section and the Final Project Agreement that explains the regulatory relief outlined in this section on the Utility's web site, and inclusion of the web site's address in the newpaper notice.

(3) All outreach efforts made under paragraph (c)(2) of this section shall be prepared in English (and any other language spoken by a large number of persons in the community of concern) and at a minimum shall include the following information:

(i) A brief description of the XL project, the intended new use of the facility, and a request for comments on the proposed UCCF.

(ii) The name, if any, and address of the proposed UCCF and its current status under the RCRA Subtitle C program.

(iii) The intended duration of use of the UCCF under the requirements of this section.

(iv) Names, addresses, and telephone numbers of contact persons, representing the Utility, to whom questions or comments may be directed.

(v) Notification of when the comment period of no less than 30 days will close.

(4) Prior to the solicitation of public comment pursuant to paragraph (c)(2) of this section, the Utility must submit copies of each notice, announcement or mailing directly to local governments and to EPA.

(5) At the close of the comment period, the Utility shall prepare a Responsiveness Package containing a summary of public outreach efforts, all comments and questions received as a result of its outreach efforts, and the Utility's written responses to all comments and questions. The Utility shall provide copies of its Responsiveness Package to any citizens that participated in the public notice process, local governments and EPA.

(d) Upon completion of the public notice procedures described in paragraph (c) of this section, the Utility must provide written notice to EPA of its intent to participate. The Notice of Intent must contain the following information:

(1) The name of the Utility, corporate address, and corporate mailing address, if different.

(2) The name, mailing address, and telephone number of a corporate-level contact person to whom communications and inquiries may be directed.This contact person may be changed by written notification to EPA.

(3) A list of the names, addresses, and EPA identification numbers, if applicable, of all Utility-owned facilities in New York State that are proposed UCCFs and the names and telephone numbers of a designated contact person at each facility.

(4) A summary of public outreach efforts undertaken pursuant to paragraph (c) of this section.

(5) A commitment that one-third of the direct cost savings outlined in paragraph (h) of this section due to project participation will be reinvested in one or more environmentally beneficial projects which are over and above existing legal requirements and which have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(6) An acknowledgment that the signatory is personally familiar with the terms and conditions of this section and has the authority to obligate and does obligate the Utility to comply with all such terms and conditions. The Utility shall comply with the signatory requirements set forth in 40 CFR 270.11(a)(1).

(e) The procedures for designating UCCFs are as follows:

(1) Subject to paragraphs (e)(2) through (5) of this section, the Utility and specified UCCF shall receive approval to comply with the requirements set forth in paragraph (b) of this section upon the receipt of written acknowledgment from EPA that the Notice of Intent described in paragraph (d) of this section has been received and found to be complete and in compliance with all the requirements set forth in paragraph (d) of this section. This acknowledgment will state whether the UCCF has been designated under this section and any additional limitations which have been placed on the UCCF.

(2) Based on information provided and comments received during the public notice and comment period, EPA shall prepare a response to the comments received. The response to comments shall be attached to the acknowledgment described in paragraph (e)(1). Both the acknowledgment and the response to comments shall be sent to all persons who commented on the designation of the UCCF(s) that are the subject of the acknowledgment.

(3) Based on information provided and comments received during or after the public notice and comment period, designated UCCFs may be rejected for the proposed use, or, if EPA determines that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors, the acknowledgment may impose conditions in addition to those in paragraph (b) of this section.

(4) If EPA determines that a site-specific informational public meeting is warranted prior to determining the acceptability of a designated UCCF, the acknowledgment will so state.

(5) Subsequent to any public meeting, EPA may reject or prohibit UCCFs from participating in this project based on information provided or comments received during or after the public notice process or based on a determination that acceptance for the proposed use under the conditions of paragraph (b) of this section may not fully protect human health and the environment based on the Utility's compliance history or other appropriate factors.

(f) At any time, a Utility may add or remove UCCF designations by complying with the following requirements:

(1) A Utility may notify EPA of its intent to designate additional UCCFs. Such a notification shall be submitted to, and processed by, EPA, in the manner indicated in paragraphs (d) and (e) of this section.

(2) To have one or more additional UCCFs designated, the Utility must comply with paragraph (c) of this section.

(3) A Utility can discontinue use of a facility as a UCCF by notifying EPA in writing.

(g) Each Utility that receives approval to consolidate hazardous waste pursuant to this section shall submit an Annual Progress Report with the following information for the preceding year:

(1) The number of remote locations statewide for which hazardous waste was handled in accordance with paragraph (b) of this section.

(2) The total tonnage of each type of hazardous waste handled by each UCCF.

(3) The number of remote locations statewide from which 1,000 kilograms or more of hazardous waste were collected per calendar month.

(4) The number of remote locations statewide from which between 100 and 1,000 kilograms of hazardous waste were collected per calendar month.

(5) An estimate of the monetary value, on a Utility-wide basis, of the direct savings realized by participation in this project. Direct savings at a minimum include those outlined in paragraph (h) of this section.

(6) Descriptions of the environmental compliance, remediation, or pollution prevention projects or activities into which the savings, described in paragraph (h) of this section, have been reinvested, with an estimate of the savings reinvested in each. Any such projects must consist of activities that are over and above existing legal requirements and that have not been initiated prior to the Utility's receipt of approval to consolidate hazardous waste pursuant to this section.

(7) The addresses and EPA identification numbers for all facilities that served as UCCFs for hazardous waste from remote locations.

(h) Utilities that receive approval to consolidate hazardous waste pursuant to this section must assess the direct savings realized as a result. Cost estimates shall include direct savings based on relief from any regulatory requirements, which the facility expects to be relieved from due to compliance with the provisions of this section including, but not limited to, the following:

(1) Database management for each remote location as an individual generator;

(2) Biennial Report preparation costs; and/or

(3) Cost savings realized from consolidation of waste for economical shipment (including no longer shipping waste directly to a TSD from remote locations).

(i) If any UCCF or Utility that receives approval under this section fails to comply with any of the requirements of this section, EPA may terminate or suspend the UCCF's or Utility's participation. EPA will provide a UCCF or Utility with 15 days written notice of its intent to terminate or suspend participation. During this period, the UCCF will have the opportunity to come back into compliance or provide a written explanation as to why it was not in compliance with the terms of this section and how it will come back into compliance. If EPA then issues a written notice terminating or suspending participation, the Utility must take immediate action to come into compliance with all otherwise applicable federal requirements. EPA may also take enforcement action against a Utility for non-compliance with the provisions of this section.

(j) This section will expire on January 10, 2005.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding paragraph (g)(12) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(12) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937.

2. Section 265.1 is amended by adding paragraph (c)(15) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(15) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding paragraph (c)(2)(ix) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(ix) A New York State Utility central collection facility consolidating hazardous waste in accordance with 40 CFR 262.90.

* * * * *

[FR Doc. 99–17347 Filed 7–9–99; 8:45 am]

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Federal Register

Monday
July 12, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98–604]

RIN 9000–AI39

Federal Acquisition Regulation; Ocean Transportation by U.S.-Flag Vessels

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify application of the preference for U.S.-flag vessels.

DATES: Comments should be submitted on or before September 10, 1999 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: Laurie Duarte, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–604@gsa.gov.

Please cite FAR case 98–604 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 FAR case 98–604.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the FAR as follows:

- Apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures (47.504 and 52.213–4).
- Add to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statues or Executive Orders-Commercial Items, Alternate I to 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels.
- Incorporate in the clause at 52.247–64 the exception at 47.504(e) for subcontracts for commercial items or commercial components.

Subpart 47.5, Ocean Transportation by U.S.-Flag Vessels, of the Federal Acquisition Regulations, does not apply to the Department of Defense. Policy and procedures applicable to DoD appear in DFARS subpart 247.5.

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.

B. Regulatory Flexibility Act

This proposed 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 most ocean transportation companies are large business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–604), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements of the clause at FAR 52.247–64 have been approved under OMB Control Number 9000–0054.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 6, 1999.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 47 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 47—TRANSPORTATION

2. Amend section 47.504 to remove paragraph (d) and redesignate paragraph (e) as (d); and at the beginning of the newly redesignated paragraph (d) revise the first sentence to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212–5 to revise the date of the clause; redesignate paragraph (b)(26) as (b)(26)(i); and add paragraph (b)(26)(ii) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statues or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statues or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *

_____ (26)(ii) Alternate I of 52.247–64.

* * * * *

4. Amend section 52.213–4 to revise the date of the clause; and add paragraph (b)(1)(xi) 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) (Date)

* * * * *

(b) * * *

(1) * * *

(xi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (DATE)(46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

* * * * *

5. Amend section 52.247–64 to revise the date of the clause; revise paragraph (d); remove paragraph (e)(1); and redesignate paragraphs (e)(2) through (e)(4) as (e)(1) to (e)(3), respectively. The revised text reads as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this clause, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(2) Unless this is a contract for ocean transportation services, the Contractor is not required to insert the substance of this clause in subcontracts under this contract for the

acquisition of commercial items or commercial components.

* * * * *

[FR Doc. 99–17520 Filed 7–9–99; 8:45 am]

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Federal Register

Monday
July 12, 1999

Part V

Equal Employment Opportunity Commission

29 CFR Part 1614
Federal Sector Equal Employment Opportunity; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA66

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This rule revises the Equal Employment Opportunity Commission's federal sector complaint processing regulations to implement the recommendations made by its Federal Sector Workgroup. The rule revises procedures throughout the complaint process, addressing the continuing perception of unfairness and inefficiency in the process. The Commission is requiring that agencies make available alternative dispute resolution programs, and is revising the counseling process, the bases for dismissal of complaints and the procedures for requesting a hearing. EEOC is providing administrative judges with authority to dismiss complaints and issue decisions on complaints. Agencies will have the opportunity to issue a final order stating whether they will implement the administrative judge's decision. The Commission is also revising the class complaint procedures, the appeals procedures, and the attorney's fees provisions.

DATES: *Effective Date:* This final rule will become effective on November 9, 1999.

Applicability Dates: The requirement in §§ 1614.102(b)(2) and 1614.105(b)(2) will apply on January 1, 2000 for agencies that do not currently have ADR programs. All actions taken by agencies and by the Commission after November 9, 1999 shall be in accordance with this final rule.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, Office of Legal Counsel, 202–663–4669 (voice), 202–663–7026 (TDD). This final rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for the final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

Introduction

The Equal Employment Opportunity Commission, as part of an ongoing effort to evaluate and improve the effectiveness of its operations, established the Federal Sector Workgroup, which was composed of representatives from offices throughout the Commission. The Workgroup focused on the effectiveness of the EEOC in enforcing the statutes that prohibit workplace discrimination in the federal government: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act, which prohibits employment discrimination based on age; and the Equal Pay Act, which prohibits sex-based wage discrimination.

The Workgroup reviewed and evaluated EEOC's administrative processes governing its enforcement responsibilities in the federal sector and, after consulting with affected agencies and groups of stakeholders, developed recommendations to improve its effectiveness. In addition, the review sought to implement the goals of Vice President Gore's National Performance Review (NPR), including eliminating unnecessary layers of review, delegating decision-making authority to front-line employees, developing partnership between management and labor, seeking stakeholder input when making decisions, and measuring performance by results.

The Commission drafted a Notice of Proposed Rulemaking (NPRM) that was circulated to all agencies for comment pursuant to Executive Order 12067 and subsequently published in the **Federal Register** on February 20, 1998. The Notice proposed changes to the Commission's federal sector complaint processing regulations at 29 CFR Part 1614 to implement the regulatory recommendations of the Federal Sector Workgroup. 63 FR 8594 (1998). It sought public comment on those proposals.

The Commission received over sixty comments on the NPRM. Federal agencies and departments submitted 19 comments. Ten comments were submitted by civil rights groups and attorneys groups and law firms, four were submitted by federal employee unions and union representatives, one by an association of federal EEO executives, and one was submitted by a Member of Congress. EEOC also received 27 comments from individuals, including federal employees, attorneys and other interested persons. The Commission has carefully considered all of the comments and, as stated in the February Notice, also considered the comments of agencies made during the interagency comment period. The Commission has made a number of changes to the proposals contained in the NPRM in response to the comments. In making these changes, the Commission intends to continue its efforts to reform the federal sector discrimination procedures. While the Commission believes that these changes will make the procedures fairer, the Commission will continue to seek improvements in the procedures. The comments on the NPRM and all of the changes to the proposals are discussed more fully below.

Alternative Dispute Resolution

In the NPRM, the Commission proposed to require all agencies to establish or make available an alternative dispute resolution (ADR) program for the EEO pre-complaint process. In addition, EEOC proposed to require that counselors advise aggrieved persons at the initial counseling session that they may choose between participation in the ADR program offered by the agency and the traditional counseling activities provided for in the current regulation.

The commenters generally supported both proposals, agreeing that providing an ADR mechanism in the pre-complaint stage of the EEO process will resolve more claims earlier in the process. Many of the agency commenters emphasized their need for flexibility in developing their ADR programs. Small agencies, in particular, requested that they have the authority to determine on a case-by-case basis whether to offer ADR to an aggrieved person for his or her claim. Other agencies urged the Commission to ensure that the election provision take into account that ADR should be voluntary for both parties, the aggrieved person and the agency. Commenters also requested that EEOC clarify how the pre-complaint process will operate when ADR is involved and address the responsibilities of the Counselors throughout that process.

The Commission has revised the ADR and counseling provisions in response to the comments. Agencies will be required to establish or make available an ADR program. The ADR program must be available during both the pre-complaint process and the formal complaint process. The Commission encourages agencies to use ADR as a valuable tool in resolving EEO disputes at all stages of the EEO process.

Agencies are free to develop ADR programs that best suit their particular

needs. While many agencies have adopted the mediation model, other resolution techniques are acceptable, provided that they conform to the core principles set forth in EEOC's policy statement on ADR, contained in Management Directive 110. The Commission believes that agencies should have flexibility in defining their ADR programs. EEOC expects that, overall, agencies will develop an array of ADR programs, designed to suit their particular circumstances. Agencies with limited funds and resources could use the services, in whole or in part, of another agency, a volunteer organization or other resources to make available an ADR program.

In keeping with the Commission's emphasis on voluntariness as a component of ADR, agencies may decide on a case-by-case basis whether it is appropriate to offer ADR to individual aggrieved persons. EEOC does not anticipate that ADR will be used in connection with every claim brought to a Counselor. For example, some agencies may wish to limit pre-complaint ADR geographically (if extensive travel would be required), or by issue (excluding, for example, all claims alleging discriminatory termination). Some agencies may wish to exclude class allegations from their ADR programs. Agencies may not, however, exclude entire bases of discrimination from ADR programs. For example, it would be inappropriate for an agency to exclude from its ADR program all claims alleging race discrimination.

In response to a comment, the Commission has revised the regulatory provision governing the initial counseling session. The Commission has removed from section 1614.105(b)(1) the requirement that Counselors advise individuals both orally and in writing of their rights and responsibilities, revising the section to require only that Counselors provide that information in writing. Counselors are encouraged to discuss the rights and responsibilities involved in the EEO process orally with individuals, but are only required to provide that information to the individuals in writing.

When an agency offers ADR to an individual during the pre-complaint process, the individual may choose to participate in the ADR program at any point in the pre-complaint process. In all cases, the Counselor will conduct an initial counseling session, as currently provided, identifying claims and fully informing individuals about their rights. When ADR is selected, resolution attempts through traditional counseling will be eliminated and the limited inquiry of the traditional counseling will change. Counselors must also inform individuals that if the ADR process does not result in a resolution of the dispute, they will receive a final interview and have the right to file a formal complaint. Management Directive 110 will contain additional guidance on these pre-complaint procedures.

The Commission's intention in requiring an ADR program is that agencies establish informal processes to resolve claims. Thus any activity conducted in connection with an agency ADR program during the EEO process would not be a formal discussion within the meaning of the Civil Service Reform Act. Generally, the agency should have an official at any ADR session with full authority to resolve the dispute. To the extent consultations with other agency officials would be necessary during any session, the agency is accountable for making sure those consultations can be accommodated.

If the ADR attempt succeeds in resolving the claim, the agency must notify the Counselor that the claim was resolved. If the ADR attempt is unsuccessful, the agency must return the claim to the Counselor to write the counseling report. That report will describe the initial counseling session, frame the issues, and report only that ADR was unsuccessful.

Dismissals

In the NPRM, the Commission proposed three changes to the dismissal provision contained in section 1614.107. First, the Commission proposed to remove the provision contained in section 1614.107(h) permitting agencies to dismiss complaints for failure to accept a certified offer of full relief. As explained in the preamble to the NPRM, the full relief dismissal policy was premised on the view that adjudication of a claim is unnecessary if the agency is willing to make the complainant whole. The regulatory process, however, has been criticized because complainants are placed in the position of risking dismissal of their complaints if they do not believe the offer of their opposing party is an offer of full relief. If a complainant makes the wrong assessment of the offer and EEOC decides on appeal that the agency did offer full relief, the complainant is precluded from proceeding with the complaint or from accepting the offer. In addition, difficulties assessing what constitutes full relief increased when, as a result of the Civil Rights Act of 1991, damages became available to federal employees. The Commission found that offers of full relief must address compensatory damages, where appropriate. *Jackson* v. *USPS*, Appeal No. 01923399 (1992); Request No. 05930306 (1993). Unless the agency offers the full amount of damages permitted under the statutory caps in the law, it is virtually impossible for the complainant to assess whether the agency has offered full relief.

The non-agency commenters uniformly supported the proposal to eliminate the full relief dismissal provision. Agency comments were mixed with nearly as many agencies supporting the change as opposing it. For the foregoing reasons, the Commission has decided to remove the failure to accept a certified offer of full relief dismissal basis from the regulations. At the same time, the Commission is retaining the provision from the NPRM that permits agencies to make an offer of resolution in a case. This offer of resolution is similar, but not identical, to the procedure under Rule 68 of the Federal Rules of Civil Procedure for an offer of judgment, and is discussed in greater detail below.

In the NPRM, EEOC proposed to add two dismissal provisions to section 1614.107. One of the new provisions will require dismissal of complaints that allege dissatisfaction with the processing of a previously filed complaint (spin-off complaints). As was explained in the NPRM, EEOC's regulations at 29 CFR Part 1613, which were superseded by 29 CFR Part 1614 in 1992, expressly permitted complainants to file separate complaints alleging dissatisfaction with agencies' processing of their original complaints. 29 CFR 1613.262 (1991). The procedure resulted in the filing of multiple spin-off complaints. The Commission recognized the need to limit these complaints, and did not include the Part 1613 provision in Part 1614. Guidance was provided in Management Directive 110. Spin-off complaints continued to be filed, however, despite there being no provision in either the regulations or the management directive permitting the filing of a separate complaint on this issue.

The comments on the proposal to add a dismissal provision for spin-off complaints fell into three categories. Agencies favored the addition. Some individual federal employees and attorneys opposed the dismissal provision and others encouraged EEOC to provide detailed guidance in Management Directive 110 on how to handle spin-off allegations outside of the EEO process.

The Commission continues to believe that any alleged unfairness or discrimination in the processing of a complaint can—and must—be raised during the processing of the underlying complaint and there is ample authority to deal with such allegations in that process. The spin-off allegations are so closely related to the underlying complaint that a separate complaint would result in redundancy, duplication of time and waste of resources. Such allegations need to be addressed within the over-all context of the initial complaint while that complaint is still pending. The Commission has decided to add the provision requiring dismissal of spin-off complaints to ensure that a balance is maintained between fair and nondiscriminatory agency processing of complaints and the need to eliminate the multiple filing of burdensome complaints about the manner in which an original complaint was processed.

In conjunction with this regulatory change, the Commission will issue detailed companion guidance in Management Directive 110 addressing the procedures to be followed to resolve allegations of dissatisfaction with the complaints process quickly and effectively. Individuals who are dissatisfied with the processing of a complaint will be advised to bring this dissatisfaction to the attention of the official responsible for the complaint, whether it be an investigator, the agency EEO manager, an EEOC administrative judge, or the Commission's Office of Federal Operations on appeal. The allegation of dissatisfaction, and any appropriate evidence, will then be considered during the processing of the existing complaint by the individuals responsible for that step of the process, who will be required to take appropriate action. If any official throughout the process becomes aware of a systemic problem of discriminatory complaint processing, that official may refer the matter to the Complaints Adjudication Division of the Office of Federal Operations at EEOC.

Proper handling of spin-off allegations is important because such allegations involve the overall quality of the complaints process and implicate the resources devoted to those allegations. The procedures in the Management Directive will ensure that any evidence of discriminatory or improper handling will be considered as part of the claim before the agency or Commission without unnecessarily adding complaints to the system. When an individual presents a counselor, an agency official, or the Commission with a spin-off allegation, the complainant shall be advised where and how to have the allegation of dissatisfaction made part of the existing complaint record. The Commission believes that agency and Commission resources should not be used to process the allegation as a separate complaint because many of these allegations involve evidentiary matters or disagreements with agency decisions made in the processing of the underlying complaint. Counselors, investigators and agency officials are required to note these allegations of dissatisfaction in the complaint record so that reviewing entities can ensure that the allegation was properly addressed. As a result, individuals who file separate complaints will have such complaints dismissed by the agency or by the Commission. The Commission has decided to delegate appellate decision-making authority for appeals from dismissals of spin-off complaints to the Office of Federal Operations to ensure expeditious handling of any such appeals.

The second new dismissal provision proposed by the Commission in the NPRM provides for dismissal of complaints through strict application of the criteria set forth in Commission decisions where there is a clear pattern of abuse of the EEO process. The proposed section would codify the Commission's decisions in *Buren* v. *USPS*, Request No. 05850299 (1985), and subsequent cases, in which the Commission has defined ''abuse of process'' as a clear pattern of misuse of the EEO process for ends other than those that it was designed to accomplish. The Commission has stated that it has the inherent power to control and prevent abuse of its processes, orders, or procedures.

Comments from agencies generally supported the proposal to add abuse of process as a basis for dismissal, while non-agency commenters opposed it or, while supporting its purpose, expressed concern that agencies would invoke this authority too frequently based arbitrarily on the number of complaints filed by an individual. Several commenters, including agencies and individuals, suggested the criteria for dismissal be clearly set forth in the regulation. A few agencies thought the criteria should be expanded beyond those set forth in the Commission's decisions and that the Commission should provide for sanctions for complainants who abuse the process. Some non-agency commenters maintained that only administrative judges should have the authority to dismiss complaints for abuse of process because agencies will abuse their discretion under this provision.

The Commission has decided to include this dismissal provision in its regulation with additional language defining abuse of process as ''a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination'' and setting forth the factors found in Commission decisions. The Commission reiterates that dismissing complaints for abuse of process should be done only on rare occasions because of the strong policy in favor of preserving complainants' EEO rights whenever possible. *Kleinman* v. *Postmaster General*, Request No. 05940579 (1994). Evaluating complaints for dismissal for abuse of process requires careful deliberation and application of strict criteria. Agencies must analyze whether a complainant's behavior evidences an ulterior purpose to abuse the EEO process. Improper purposes would include circumventing other administrative processes such as the labor-management dispute process; retaliating against the agency's in-house administrative machinery; or overburdening the EEO complaint system, which is designed to protect individuals from discriminatory practices. *Hooks* v. *USPS*, Appeal No. 01953852 (1995). Evidence of numerous complaint filings, in and of itself, is an insufficient basis for making a finding of abuse of process. *Id.* However, as stated in the regulation, evidence of multiple complaint filings combined with the subject matter of the complaints (such as frivolous, similar or identical allegations; lack of specificity in the allegations; and allegations involving matters previously resolved) may be considered in determining whether a complainant has engaged in a pattern of abuse of the EEO process. *See Goatcher* v. *USPS*, Request No. 05950557 (1996).

The Commission will require strict adherence to these criteria. With respect to the argument that only administrative judges should have the authority to dismiss complaints for abuse of process, the Commission sees no reason to treat this basis for dismissal differently than the others listed in section 1614.107 by disallowing it to agencies. The Commission believes that review by the Commission on appeal will fully safeguard complainants against arbitrary or unjust dismissals.

The Commission believes that the new dismissal provisions for spin-off complaints and abuse of process will improve the efficiency and effectiveness of the EEO process. In addition, dealing summarily with abuse of process complaints will make the process fairer both for agencies that must process

complaints and for complainants who raise bona fide allegations by focusing resources on bona fide allegations.

Partial Dismissals

In the NPRM, the Commission proposed changes to the regulations to eliminate interlocutory appeals of partial dismissals of complaints. Currently, where an agency dismisses part of a complaint, but not the entire complaint, the complainant has the right to immediately appeal the partial dismissal to EEOC. The Commission provided for interlocutory appeals of partial dismissals in Part 1614, hoping to streamline the process and avoid holding two or more hearings on the same complaint. Multiple hearings could have occurred absent an interlocutory appeal when EEOC reversed an agency's partial dismissal after a hearing was held on the rest of the complaint. The Commission believes that this result can be accomplished without the unintended delays or fragmentation of complaints that may have resulted from implementation of the current provision. The Commission proposed to amend section 1614.401 to remove the right to immediately appeal the dismissal of a portion of a complaint. In addition, the Commission proposed to add a paragraph to the dismissals section, section 1614.107, explaining how to process complaints where a portion of the complaint, but not the entire complaint, meets one or more of the standards for dismissal contained in that section.

Comments on eliminating interlocutory appeals for partial dismissals were mixed. Many commenters, agencies and others, supported the proposal believing that it will simplify the process. The commenters who opposed the change expressed concerns that there will be no investigatory record of the portion of a complaint dismissed by an agency but reinstated by the administrative judge or the Office of Federal Operations. Some agencies questioned how the administrative judge will be able to evaluate a partial dismissal if there is no record on that part of the complaint.

The Commission believes that eliminating interlocutory appeals of partial dismissals will result in a more efficient complaint process and will help avoid fragmentation of complaints. The Commission has decided, therefore, to finalize the proposals without change. The concerns raised by some of the commenters are addressed by the procedure contained in new section 1614.107(b). If an agency determines that a portion of a complaint, but not all of the complaint, meets one or more of the standards for dismissal contained in section 1614.107(a), the agency must document the file with its reasons for believing that the portion of the complaint meets the standards for dismissal. Accordingly, the agency must fully explain its reasons for dismissing that portion of the complaint, and, if appropriate, include any evidence or documents necessary to support that conclusion. The agency's rationale and any record supporting that rationale must be sufficiently developed for an administrative judge or the Office of Federal Operations to evaluate the appropriateness of the partial dismissal without further investigation or inquiry. The agency will then investigate the remainder of the complaint.

If the complainant requests a hearing, the administrative judge will, as soon as practicable, evaluate the reasons given by the agency for believing a portion of the complaint meets the standards for dismissal. If the administrative judge believes that the agency's reasons are not well taken, the entire complaint or all of the portions not meeting the standards for dismissal will continue in the hearing process. Where a portion of a complaint is reinstated in the hearing process and the investigatory record from the agency is incomplete as to the portion the agency dismissed, the administrative judge will oversee supplementation of the record by discovery or any other appropriate method. Administrative judges will no longer remand complaints or portions of complaints for supplemental investigations by the agency, but will ensure that the record is sufficiently developed during the hearing process.

The administrative judge's decision on the partial dismissal will become part of the decision on the complaint. Where a complainant requests a final decision from the agency without a hearing, the agency will issue a decision addressing all claims in the complaint, including its rationale for dismissing claims, if any, and its findings on the merits of the remainder of the complaint. The complainant may appeal the agency's final action, including any partial dismissals, to the EEOC. If the Office of Federal Operations finds that a dismissal was improper, it will give the complainant the choice between a hearing and an agency final decision on the claim.

Offer of Resolution

The Commission proposed to add this provision, limiting attorney fees and costs when a complainant rejects an offer and subsequently obtains less relief, in place of the dismissal for failure to accept full relief. The purpose of the offer of resolution is to provide incentive to settle complaints and to conserve resources where settlement should reasonably occur. Some commenters preferred the full relief dismissal to the proposed offer of resolution. Two stated that the relief offered should be compared to the relief obtained, rather than to the decision obtained, in order to determine which is more favorable. A few commenters asked for clarification of what the offer must contain, for example, suggesting that it must contain attorney's fees. Several commenters raised concerns that a complainant might not have enough information to judge whether the offer is reasonable or may not fully appreciate the significance of the offer if the offer is made early in the process. Others questioned how non-monetary remedies would be evaluated for determining whether the relief awarded was more favorable than that offered. Some commenters objected that the ''interest of justice'' exception was too vague; some asked that it be defined in the regulation while others suggested that it be deleted for that reason. Finally, several commenters believed the proposed provision was a good alternative to the dismissal for failure to accept full relief.

After considering these comments, the Commission has decided that the offer of resolution is an appropriate alternative to and preferable to the dismissal for failure to accept full relief, but has made several changes to the provision to address the commenters' concerns. Simply to clarify, we have revised the provision so that the relief offered is compared with the final relief obtained rather than with the decision when determining which is more favorable. That formulation is more practicable and expresses the Commission's original intent. We have also added a sentence stating that the agency's offer, to be effective, must include attorney's fees and costs that have been incurred and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer or it may itemize the amounts and types of monetary relief being offered.

We have revised the offer of resolution provision to include a two-tiered approach. An offer of resolution can be made to a complainant who is represented by an attorney at any time from the filing of a formal complaint until 30 days before a hearing. If, however, the complainant is not represented by an attorney, an offer cannot be made before the parties have received notice that an administrative

judge has been assigned. We will include model language in the Management Directive that agencies are required to include in each offer of resolution.

We note that, when comparing the relief offered in an offer of resolution with that actually obtained, we intended that non-monetary as well as monetary relief would be considered. Although a comparison of non-monetary relief may be inexact and difficult in some cases, non-monetary relief can be significant and cannot be overlooked.

The Commission believes that equitable considerations may make it unjust to apply the offer of resolution provision in particular cases and, thus, the interest of justice exception is necessary to prevent the denial of fees in those circumstances. We do not envision many circumstances in which the interest of justice provision will apply. One example, however, of appropriate use of the exception would be where the complainant received an offer of resolution, but was informed by a responsible agency official that the agency would not comply in good faith with the offer (e.g., would unreasonably delay implementation of the relief offered). The complainant did not accept the offer for that reason, and then obtained less relief than was contained in the offer of resolution. We believe that it would be unjust to deny attorney's fees and costs in this case.

Fragmentation

In the NPRM, the Commission requested public comment on the issue of fragmentation of complaints in the federal sector EEO process. Specifically, the Commission asked whether regulatory changes are necessary to correct the fragmentation problem. EEOC believes that agencies are not properly distinguishing between factual allegations in support of a legal claim and the legal claim itself, resulting in the fragmentation of some claims that involve a number of different allegations. Certain kinds of claims are especially susceptible to fragmentation, for example, harassment claims and continuing violation claims. Fragmentation of claims is undesirable both because it unnecessarily multiplies complaints and can improperly render non-meritorious otherwise valid and cognizable claims.

The Commission received some comments on the fragmentation issue. Commenters recommended the elimination of remands by administrative judges, the elimination of partial dismissals (see discussion above), and the revision of the consolidation procedures in the regulation. Commenters also suggested that EEO Counselors need more training to recognize the difference between claims and allegations.

The Commission has revised the regulation in several places to address the fragmentation problem. Section 1614.108(b) has been amended to replace the phrase ''matter alleged to be discriminatory'' with the word ''claim.'' The Commission believes that agencies may be interpreting ''matter'' to mean something less than a claim. Where a complainant raises a claim of retaliation or a claim involving terms and conditions of employment, subsequent events or instances involving the same claim should not be filed as separate complaints, but should be treated as part of the first claim. For the same reasons, the Commission has revised section 1614.603 to remove the word ''allegations'' and replace it with ''claims.''

The Commission is removing from the hearings section the provision permitting administrative judges to remand issues to agencies for counseling or other processing. The Commission intends that administrative judges will have full responsibility for complaints after they enter the hearing stage and should no longer remand them to the agencies. This change and others involving hearings are discussed more fully below.

Finally, the Commission is adding a provision permitting amendment of complaints, and is revising the consolidation section of the regulation. Section 1614.106 now permits complainants to amend complaints to add issues or claims that are like or related to the original complaint any time prior to the conclusion of the investigation. After requesting a hearing, complainants may seek leave from the administrative judge to amend a complaint to add issues or claims that are like or related to the original complaint by filing a motion to amend. The Commission has amended section 1614.606, which governs joint processing and consolidation of complaints, to require that agencies consolidate two or more complaints filed by the same complainant. The current consolidation provision is permissive only. Moreover, the current provision, the Commission believes, may serve to discourage consolidation of complaints because it provides that the date of the first filed complaint controls the applicable complaint processing time frames. Under this provision, if a complainant filed a second complaint 175 days after the first complaint, the current regulation would provide the agency with only 5 days to investigate the second complaint if it were consolidated with the first complaint. As part of the revision to the consolidation section, the Commission provides in the final rule that when a complaint has been consolidated with an earlier filed complaint the agency must complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that a complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. If a complainant requests a hearing on consolidated complaints prior to the agency's completion of the investigation, the administrative judge will decide how best to insure an appropriate record, whether by staying the hearing process for some period of time during which the agency can finish its investigation or by supplementation of the record through discovery or other methods ordered by the administrative judge. When an administrative judge becomes aware that one or more complaints in the agency process should be consolidated with a complaint in the hearing process, the administrative judge may consolidate all claims at the hearing stage or hold the complaint in the hearing process until the others are ready for hearing.

Management Directive 110 will contain additional guidance on amendment of complaints, consolidation of complaints, and fragmentation, including what constitutes a cognizable claim under the employment discrimination statutes.

Hearings

The Commission proposed several changes to the hearings provisions in the Notice of Proposed Rulemaking, the most significant being the proposal to make administrative judge's decisions final in complaints referred to them for hearing. The Commission received dozens of comments on this proposal, with the majority of agency commenters opposing it and the non-agency commenters overwhelmingly favoring it. A number of agencies challenged EEOC's statutory authority to make administrative judges' decisions final, arguing that section 717(c) of Title VII requires that agencies take final action on EEO complaints before a complainant may appeal to EEOC. In addition, an agency argued that agency final action is required to trigger federal court suit rights. Section 717(c) permits an individual to file a lawsuit in federal court in four instances, including within 90 days of receipt of notice of final

action. One agency suggested that EEOC could make administrative judges' decisions final by moving the hearing process to the appellate stage. Agencies also expressed concern about EEOC's resources, believing that there will be an increase in requests for hearings if administrative judges' decisions are made final. Agencies also questioned the quality and consistency of administrative judges' decisions in opposing the change. Several agencies complained that they would be unable to defend themselves if administrative judges' decisions were made final.

Several agencies, however, supported the proposal. One noted that EEOC's statistics demonstrate a problem with the EEO process government-wide that undermines the confidence of complainants in the system and creates a perception of unfairness. The civil rights groups, unions and attorneys' groups that commented on the proposal strongly supported it and some noted that it is the most important change proposed by EEOC in the NPRM.

The Commission has carefully considered all of the comments on this issue. The Commission strongly believes that allowing agencies to reject or modify an administrative judge's findings of fact and conclusions of law and to substitute their own decision leads to an unavoidable conflict of interest and creates a perception of unfairness in the federal EEO system. While the Commission believes that its interpretation of the statute regarding the Commission's authority is correct, the Commission has decided to revise the proposal in order to make needed improvements in the procedures while recognizing the concerns expressed by the agencies. At the same time the Commission will preserve the functional goal of the earlier proposal: agencies will no longer be able to simply substitute their view of a case for that of an independent decision-maker.

In response to comments from agencies that the Office of Federal Operations was upholding agency decisions that reversed administrative judge's decisions finding discrimination, we made two independent inquiries of EEOC's information systems. The Commission had not previously studied that information or reported it, although it had collected it. The first inquiry showed that in 1994 and 1996, there were 80 administrative judges' decisions favorable to complainants that were reversed by the agency, appealed to the Office of Federal Operations, and for which the Office of Federal Operations issued a decision on the merits. Of those 80 decisions, EEOC upheld the administrative judge in 53 instances and upheld the agency in 27 instances. In the second inquiry, we found that in fiscal year 1998, there were 157 decisions by the Office of Federal Operations reviewing administrative judges' decisions adverse to agencies. Of those decisions, 135 (86%) affirmed the administrative judge in whole, 8 (5%) reversed in whole or in part, and 14 (9%) modified the administrative judge's decision. These inquiries demonstrated that the arguments made by the agencies were not supported by the facts. EEOC upholds administrative judges' decisions in a significant majority of all cases.

The final rule provides that administrative judges will issue decisions on all complaints referred to them for hearings. Agencies will have the opportunity to take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order will notify the complainant whether or not the agency will fully implement the decision of the administrative judge and will contain notice of the complainant's suit and appeal rights. If the agency's final order does not fully implement the decision of the administrative judge, the agency must simultaneously file an appeal of the decision with EEOC. In this way, agencies will take final action on complaints referred to administrative judges by issuing a final order, but they will not introduce new evidence or write a new decision in the case. Agencies will have an additional 20 days to file a brief in support of their appeal.

To parallel the provision on interim relief in section 1614.502(b), we are adding a provision requiring an agency to provide interim relief in limited circumstances when the agency appeals. When the agency issues a final order notifying the complainant that it will not fully implement the administrative judge's decision, the case involves removal, separation or suspension continuing beyond the date of the order, and the administrative judge's decision provided for retroactive restoration, the agency must comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position stated by the administrative judge pending the outcome of the appeal. In response to agency comments, we have revised the regulation to more closely track the MSPB's interim relief provision, including a provision permitting agencies to decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. Prospective pay and benefits must be provided, however. In addition, we have noted in the regulation that an employee may decline an offer of interim relief, and a grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action for another reason. Interim relief does not apply in cases where the complainant alleges that she or he was not retained beyond the period of a temporary appointment which expired prior to the appeal or that the temporary position was not converted to a permanent position. For example, where the Census hires temporary employees and the temporary appointment would have expired prior to the appeal, or the employee was not converted to a career position, the interim relief provision would not apply.

In another proposed change to the hearings process in the NPRM, we proposed that at the end of the investigation or after 180 days, complainants who want to request a hearing will send their requests directly to the EEOC office instead of to the agency EEO office in order to eliminate delays. Almost all of the commenters agreed with this proposal. A few commenters asked that complainants be required to notify the agency at the same time that they make the request to EEOC. That requirement was already contained in the proposal so no change is being made. We have made some minor changes to the provision. We added a requirement that all requests for hearings must be in writing. The proposal stated that EEOC would request the complaint file after it received a request for hearing. The final rule has been revised to state that the agency must forward the file within 15 days of the date of receipt of the request for hearing. Since the agency will be receiving notice directly from the complainant when a hearing is requested, eliminating the request from EEOC and the time incident to preparation of that letter will result in a more efficient process. If any agency receives a request for a hearing that has not also been submitted to EEOC, the agency should forward the request along with the file to EEOC and should advise the complainant of its actions and of the requirement that requests be submitted directly to EEOC.

In response to comments, the Commission has decided to revise section 1614.109(a) to better explain the administrative judge's responsibilities in the hearing process and to remove the current provision permitting

administrative judges to remand for counseling issues that are like or related to those issues raised in the complaint. Section 1614.109(a) now provides that upon appointment, the administrative judge will assume full responsibility for adjudication of the complaint, including overseeing the development of the record. The Commission intends that the administrative judge will take complete control of the case once a hearing is requested. The new sentence clarifies that the agency's authority to dismiss a complaint ceases once a hearing is requested. Administrative judges will preside over any necessary supplementation of the record in the hearing process without resort to remands of complaints to agencies for additional investigations. Remands of complaints to agencies for supplemental investigations have proliferated, resulting in fragmentation or unwarranted delays. The changes to the regulation will eliminate these remands and improve the timeliness and efficiency of the complaint process.

In the NPRM, the Commission proposed to add a new section 1614.109(b) providing that administrative judges have the authority to dismiss complaints during the hearing process for all of the reasons contained in section 1614.107. Nearly all commenters, agencies and others, supported this proposal. In response to comments, the Commission has revised the regulation to provide that administrative judges may dismiss complaints on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint.

The Commission has made several minor revisions to the hearings section of the regulations. In response to a comment, we have added a new section (f)(1) providing that the administrative judge must serve all orders to produce evidence on both parties. We have revised section 1614.109(i) to provide that the time frame for issuing a decision will run from the administrative judge's receipt of the complaint file from the agency, rather than, as currently provided, from receipt by EEOC of a request for a hearing. In addition, the Commission has revised the section to provide that administrative judges send the hearing record, rather than the entire record, to the parties with the final decision. Finally, the Commission has removed the requirement that administrative judges send final decisions and the record to the parties by certified mail. This will save the Commission scarce resources.

Procedures for Handling Clearly Meritless Cases

The growing inventory of cases pending at agencies, in the hearings units and on appeal to the Commission causes delays across the board. The problem is exacerbated by the allocation of scarce resources to meritless cases. Many commenters representing all points of view identified this situation as an urgent priority, and the Federal Sector Workgroup devoted considerable attention to the problem. The Workgroup noted the widespread concern among stakeholders that the system is overburdened by meritless complaints and misused as a forum for workplace disputes that do not involve EEO matters. Its Report concluded that ''Government resources should be targeted to addressing colorable claims of discrimination. Excessive resources devoted to non-meritorious claims of discrimination undermines the credibility of the process and impairs the rights of those with meritorious claims.'' The Commission agrees.

Among the measures proposed by the Commission in its NPRM to address this problem were two provisions to give administrative judges additional procedures for quickly resolving complaints that are inappropriately in the EEO process or that lack merit. First, the Commission proposed to give administrative judges the authority to dismiss complaints during the hearing process for all of the reasons contained in the dismissal section, 29 CFR 1614.107, including for failure to state a claim. As discussed above, the Commission has included this proposed section 1614.109(b), which most commenters supported, in its final rule.

The second proposal was a provision for decisions without a hearing in cases that lack merit, which would have supplemented administrative judges' existing authority to issue summary judgment decisions currently contained in 29 CFR 1614.109(e). The Commission proposed to add a provision, section 1614.109(g)(4), permitting administrative judges to issue a decision without a hearing where they determine, even though material facts remain in dispute, that there is sufficient information in the record to decide the case, that the material facts in dispute can be decided on the basis of the written record, that there are no credibility issues that would require live testimony in order to evaluate a witness' demeanor and that the case lacks merit.

Almost all non-agency commenters as well as about half of the agency commenters opposed granting administrative judges this new authority, arguing that there must be a hearing if material facts are in dispute. Individual commenters and those representing civil rights groups and unions also doubted that the administrative judge would have sufficient information in the record to decide the case under this procedure because the agency compiles the record and the complainant is likely not to have had an opportunity to develop evidence. Some suggested that complainants have won cases that may have seemed non-meritorious when filed, based on discovery and live testimony at the hearing. Several agency commenters believed the procedure would also adversely affect agencies by leading to erroneous decisions based on incomplete evidence. Agencies also thought it was unclear and difficult to distinguish from traditional summary judgment. A number of agency commenters supported the proposal as an appropriate way to streamline the process and deal with the increasing workload. When the investigatory record is complete, they argued, a hearing may waste resources and cause agency employees to be absent from work when their testimony is not really necessary.

The Commission has decided that it is not necessary to add this provision at this time. We believe that the problem of meritless complaints can be addressed through appropriate application of the failure to state a claim dismissal basis and the traditional summary judgment provision. Dismissal for failure to state a claim is appropriate when a complaint alleges conduct that does not rise to the level of a violation of the anti-discrimination statutes. Summary judgment under section 1614.109(e) is appropriate for complaints that state a claim but that involve no genuine dispute over material facts. Continued processing of cases that should have been dismissed for failure to state a claim or decided on summary judgment contributes to the growing inventory and the perception that the system gives too much consideration to trivial matters. Such cases should be resolved more quickly at earlier stages in the process using existing legal standards. The Commission summarizes these standards below and intends to provide more detailed guidance in Management Directive 110.

Dismissal for Failure to State a Claim: Existing section 1614.107(a) requires that agencies dismiss a complaint that fails to state a claim under section 1614.103. Under the new section 1614.109(b), administrative judges may dismiss complaints for the same reasons

as contained in section 1614.107. In determining whether a complaint states a claim, the proper inquiry is whether the conduct as alleged would constitute an unlawful employment practice under the EEO statutes. *Cobb* v. *Department of the Treasury,* Request No. 05970007 (March 13, 1997). *See Burlington Industries, Inc.* v. *Ellerth,* 118 S. Ct. 2257, 2268–9 (1998)(referencing cases in which courts of appeals considered whether various employment actions were sufficient to state a claim under the civil rights laws).

When a complainant does not challenge agency action or inaction with respect to an employment decision or a specific term, condition or privilege of employment, but alleges a hostile and discriminatory working environment, the severity of the alleged conduct must be evaluated to determine whether the complaint is actionable under the statutes. As the Supreme Court has stated, ''Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview.'' *Harris* v. *Forklift Systems, Inc.*, 510 U.S. 17, 21–22 (1993); *see Meritor Savings Bank, FSB* v. *Vinson,* 477 U.S. 57, 67 (1986).

In *Faragher* v. *City of Boca Raton,* 118 S. Ct. 2275 (1998), the Court reemphasized that conduct must rise above a certain minimum level to be actionable: '' '[S]imple teasing,' * * * offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.' '' 118 S. Ct. at 2283 (citations omitted). To determine whether an environment is sufficiently hostile or abusive, courts must look at all of the circumstances, including the frequency and severity of the conduct. *Id.* These standards should ''ensure that Title VII does not become a 'general civility code.' * * * Properly applied, they will filter out complaints attacking 'the ordinary tribulations of the workplace'' * * *.'' *Id.* at 2283–84 (citations omitted).

The Commission also has repeatedly stated that isolated comments, petty slights, and trivial annoyances are not actionable. See EEOC Compliance Manual Section 8, ''Retaliation,'' No. 915.003 (May 20, 1998) at 8–13; EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N–915.050 (March 19, 1990) at 14; EEOC Enforcement Guidance on *Harris* v. *Forklift Systems, Inc.*, No. 915.002 (March 8, 1994) at 6 n.4; *see also, e.g., Cobb* v. *Department of the Treasury, supra.; Moore* v. *United States Postal Service,* Appeal No. 01950134 (April 17, 1997); *Backo* v. *United States Postal Service,* Request No. 05960227 (June 10, 1996); *Phillips* v. *Department of Veterans Affairs,* Request No. 05960030 (July 12, 1996); *Miller* v. *United States Postal Service,* Request No. 05941016 (June 2, 1995); *Banks* v. *Department of Health and Human Services,* Request No. 05940481 (February 16, 1995) . However, a persistent pattern of harassing conduct or a particularly severe individual incident, when viewed in light of the work environment as a whole, may constitute a hostile environment. *See, e.g., Brooks* v. *Department of the Navy,* EEOC Request No. 05950484 (June 25, 1996).

The Commission cautions that before dismissing a complaint the administrative judge must ensure that the claim has not been fragmented inappropriately into more than one complaint. As discussed above under the heading ''Fragmentation,'' a series of subsequent events or instances involving the same claim should not be treated as separate complaints, but should be added to and treated as part of the first claim.

Summary Judgment: The problem identified by the Workgroup can also be addressed through more effective use of the existing summary judgment authority. Summary judgment is proper when ''material facts are not in genuine dispute.'' 29 CFR 1614.109(e). Only a dispute over facts that are truly material to the outcome of the case should preclude summary judgment. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (only disputes over facts that might affect the outcome of the suit under the governing law, and not irrelevant or unnecessary factual disputes, will preclude the entry of summary judgment). For example, when a complainant is unable to set forth facts necessary to establish one essential element of a prima facie case, a dispute over facts necessary to prove another element of the case would not be material to the outcome. *Celotex Corp.* v. *Catrett,* 477 U.S. 317, 322–23 (1986).

Moreover, a mere recitation that there is a factual dispute is insufficient. The party opposing summary judgment must identify the disputed facts in the record with specificity and demonstrate that there is a dispute by producing affidavits or records that tend to disprove the facts asserted by the moving party. In addition, the non-moving party must explain how the facts in dispute are material under the legal principles applicable to the case. 29 CFR 1614.109(e)(2); *Anderson,* 477 U.S. at 257; *Celotex,* 477 U.S. at 322–24; *Patton* v. *Postmaster General,* Request No. 05930055 (1993) (summary judgment proper where appellant made only a general pleading that his job performance was good but set forth no specific facts regarding his performance and identified no specific inadequacies in the investigation).

Class Complaints

The Federal Sector Workgroup identified a series of concerns with the class complaint process. It found that despite studies indicating that class-based discrimination may continue to exist in the federal government, recent data reflect that very few class complaints are filed or certified at the administrative level. While an effective administrative process for class complaints offers several important advantages over litigation in federal court, including informality, lower cost, and speed of resolution, the Workgroup found that the current process does not adequately address class-based discrimination in the federal government. As a result, complainants often have elected to pursue their complaints in federal court.

Class actions play a particularly vital role in the enforcement of the equal employment laws. They are an essential mechanism for attacking broad patterns of workplace discrimination and providing relief to victims of discriminatory policies or systemic practices. The courts have long recognized that class actions ''are powerful stimuli to enforce Title VII,'' providing for the ''removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.'' *Wetzel* v. *Liberty Mutual Ins. Co.*, 508 F.2d 239, 254 (3d Cir.), *cert. denied*, 421 U.S. 1011 (1975). The class action device exists, in large part, to vindicate the interests of civil rights plaintiffs. See 5 James W. Moore, Moore's Federal Practice § 23.43[1][a], at 23–191 (3d ed. 1997).

These same policies apply with equal force in the federal sector. Accordingly, the Commission is making several changes in its regulation to strengthen the class complaint process. The purpose of these changes is to ensure that complaints raising class issues are not unjustifiably denied class certification in the administrative process and that class cases are resolved under appropriate legal standards consistent with the principles applied by federal courts.

In the NPRM, the Commission proposed four regulatory changes to the class complaint procedures found at 29

CFR 1614.204. The Commission proposed to revise section 1614.204(b) to provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications raised in an individual complaint. If a complainant moves for class certification after completing counseling, the complainant will not be required to return to the counseling stage. Individual commenters and those representing civil rights groups uniformly endorsed the proposed change. Some agency commenters supported the change but asked that the regulation define ''reasonable point in the process''; some suggested that this point be during the investigation or within a short time after distribution of the agency investigative file, rather than during discovery. Other agencies opposed the change, arguing that it would entail additional investigative costs, cause delays and invite abuse by complainants seeking to bypass the counseling process by making frivolous class allegations. They maintained that a complainant should have to elect between a class or an individual claim at the pre-complaint stage. If a complainant can move for class certification on the eve of hearing, they argued, the agency would be required to put the individual complaint on hold and start its investigation all over again as a class case. Others objected only to eliminating counseling, as that is how the complainant is informed of his or her rights and responsibilities as class agent.

The Commission believes that this revision is an important step toward removing unnecessary barriers to class certification of complaints that are properly of a class nature. The Commission has consistently recognized that its decisions on class certification must be guided by the complainant's lack of access to pre-certification discovery on class issues; this is different from the situation of a federal court Rule 23 plaintiff who does have access to pre-certification discovery on class issues. Similarly, an individual complainant often will not have reason to know at the counseling stage, and sometimes even after the agency's investigation, that the challenged action actually reflects an agency policy or practice generally applicable to a class of similarly situated individuals.

Because of the importance of discovery, the Commission has decided not to place the restrictions suggested by some of the commenters on the time at which a complainant may seek class certification. The Commission intends that ''reasonable point in the process'' be interpreted to allow a complainant to seek class certification when he or she knows or suspects that the complaint has class implications, i.e., it potentially involves questions of law or fact common to a class and is typical of the claims of a class. Normally, this point will be no later than the end of discovery at the hearing stage. The complainant must seek class certification within a reasonable time after the class nature of the case becomes apparent. The administrative judge will deny class certification if the complainant has unduly delayed in moving for certification. In response to the comments, the Commission has added language to this effect in the regulation. The Commission disagrees with those commenters who advocated returning the complaint for additional counseling. It will be the responsibility of the agency or administrative judge, as appropriate, to ensure that the class agent is advised of his or her obligations at the time the complainant moves for certification. The Commission believes it is impracticable and unproductive to require the complainant to return to counseling at this stage.

A request for class certification made after the filing of an individual complaint but before the issuance of the notice required by section 1614.108(f) will be forwarded to an EEOC administrative judge for a decision on whether to accept or dismiss a class complaint. The administrative judge's decision will be appealable to the Office of Federal Operations. The filing of an appeal will not stay further proceedings, although either party may request that the administrative judge stay the administrative process pending a decision on appeal.

The Commission proposed in the Notice of Proposed Rulemaking to amend section 1614.204(d) to provide that administrative judges would issue final decisions on whether a class complaint will be accepted (or certified) or dismissed. Currently, administrative judges make recommendations to agencies on acceptance or dismissal. For the same reasons noted in the discussion of administrative judges' decisions above, the Commission has decided to provide that administrative judges will issue decisions to accept or dismiss class complaints, and agencies will take final action by issuing a final order, and, simultaneously appealing the decision to EEOC if the final order does not fully implement the decision of the administrative judge. Some agency commenters said they supported making certification decisions final only if the agency is given the right to an interlocutory appeal. That was the Commission's intent. The Commission has revised current section 1614.401(b) (redesignated section 1614.401(c)), which sets forth appeal rights in all the situations that might arise in class cases, to include agency interlocutory appeals from administrative judges' certification decisions.

In the proposed rule, the Commission proposed to amend section 1614.204(g)(2) to require that administrative judges must approve class settlement agreements pursuant to the ''fair and reasonable'' standard, even when no class member has asserted an objection to the settlement. Some agency commenters supported this proposal while most others disagreed, arguing that it would add an unnecessary layer of review when the parties are satisfied with the settlement and that adequate safeguards exist in section 1614.204(g)(4), which gives dissatisfied class members the right to petition to vacate a settlement, and 1614.204(a)(2), which requires the class agent to fairly and adequately represent the class.

Because it believes that the administrative judge's approval of settlements in all cases is the best way to protect the interests of the class, the Commission has decided to add this proposal to its regulation. As one agency commenter noted, class agents sometimes seek to settle their individual claims without full regard for the interests of the class. The change makes the regulations consistent with the practice in federal courts where the court must approve any settlement of a class case under a fair and reasonable standard. Thus, the same standard applies whether or not any petitions to vacate the resolution have been filed. In response to the suggestion of one agency, the Commission has elaborated upon the standard by revising the regulation to follow the language used by the Court of Appeals for the District of Columbia Circuit in *Thomas* v. *Albright*, 139 F.3d 227, 233 (1998), which held that to approve a settlement under Rule 23, a district court must find that it is ''fair, adequate, and reasonable to the class as a whole.'' The court is to evaluate the terms of the settlement in relation to the strength of the plaintiffs' case, and should not reject a settlement merely because individual class members contend that they would have received more had they prevailed after a trial. 139 F.3d at 231, 232. See also Manual for Complex Litigation (Third) (1995) §§ 30.41–.42.

The Commission also has made additional revisions to the procedures for notice and approval of settlements contained in section 1614.204(g)(4) to

reflect the changes in the administrative judge's authority. Currently, any member of the class who is dissatisfied may petition the agency EEO Director to vacate the resolution because it benefits only the class agent or is otherwise not fair and reasonable. The administrative judge issues a recommended decision, and the agency makes the final decision whether to vacate the resolution. 29 CFR 1614.204(g)(4). In the new section 1614.204(g)(4), a class member may petition the administrative judge to vacate the resolution. The administrative judge reviews the notice of resolution and considers any petitions filed. The administrative judge must issue a decision vacating or approving the settlement on the basis of whether it is fair, adequate and reasonable to the class as a whole. A decision to vacate a settlement, as well as a decision to approve settlement over the objections of petitioning class members, is appealable to the Office of Federal Operations.

Finally, the Commission proposed to amend section 1614.204(l)(3) in the proposed rule to clarify the burdens of proof applicable to individual class members who believe they are entitled to relief. The change makes explicit that the burdens enunciated in *Teamsters* v. *United States*, 431 U.S. 324 (1977), and subsequent lower court decisions apply. In Teamsters, the Court stated that where a finding of discrimination has been made, there is a presumption of discrimination as to every individual who can show he or she is a member of the class and was affected by the discrimination during the relevant period of time. 431 U.S. at 361–62. Lower courts have held that this presumption may be rebutted only by clear and convincing evidence that the class member is not entitled to relief. See *McKenzie* v. *Sawyer*, 684 F.2d 62, 77–78 (D.C. Cir. 1982); *Trout* v. *Lehman*, 702 F.2d 1094, 1107 (D.C. Cir. 1983), vacated on other grounds, 465 U.S. 1056 (1984); *United States* v. *City of Chicago*, 853 F.2d 572, 575 (7th Cir. 1988); *Cox* v. *American Cast Iron Pipe Co.*, 784 F.2d 1546, 1559 (11th Cir.), *cert. denied*, 479 U.S. 883 (1986); *Baxter* v. *Savannah Sugar Refining Corp.*, 495 F.2d 437, 444–45 (5th Cir.), *cert. denied*, 419 U.S. 1033 (1974); *Reynolds* v. *Alabama Department of Transportation*, 996 F. Supp. 1156, 1195 (N.D. Ala. 1998). Other courts, however, have held that the standard is preponderance of the evidence. *See Wooldridge* v. *Marlene Indus. Corp.*, 875 F.2d 540, 549 (6th Cir. 1989); *Craik* v. *Minnesota State Univ. Bd.*, 731 F.2d 465, 470 n.8 (8th Cir. 1984); *Sledge* v. *J.P. Stevens & Co., Inc.*, 585 F.2d 625, 637 (4th Cir. 1978); *Richerson* v. *Jones*, 551 F.2d 918, 923–25 (3d Cir. 1977).

Comments on this provision were divided, with non-agency commenters uniformly endorsing it and most agency commenters objecting that ''clear and convincing'' was too high a standard, inappropriate for a class case, and a misreading of Teamsters. The objecting commenters wanted the standard to be preponderance of the evidence.

The Commission has decided to retain the ''clear and convincing'' standard and emphasizes that this regulatory revision merely codifies the longstanding rule in the federal sector, *see McKenzie* v. *Sawyer, supra.* In 1992, when the Commission first issued its Part 1614 regulation, we considered the burden of proof issue with respect to relief when discrimination has been found. The Commission determined at that time that no change was required to its requirement, included in the predecessor Part 1613 regulation and in the new section 1614.501, that relief should be provided to an individual when discrimination is found unless clear and convincing evidence indicates that the personnel action at issue would have been taken even absent discrimination. See 57 Fed. Reg. 12634, 12641 (April 10, 1992); 29 CFR 1614.501. The Commission concluded that the Supreme Court's decision in *Price Waterhouse* v. *Hopkins*, 490 U.S. 228 (1989), which held that an employer could avoid liability in a mixed motive case under a preponderance of the evidence standard, did not require a change in the regulation. As we then noted, the Hopkins decision cited and distinguished the Commission's Part 1613 regulation on the basis that it relates to proof at the relief stage rather than the liability stage. 490 U.S. at 253-54. The Commission further noted that the relief provision in the regulation ''will be applied most often to determining whether class members are entitled to individual relief after a class finding of discrimination, but it is also applicable to individual cases where there has been a finding of discrimination.'' 57 FR at 12641.

The Commission is now making this presumption explicit in its revised class regulation. The Commission believes that requiring proof at the ''clear and convincing'' level when the agency has been found to have engaged in classwide discrimination furthers the remedial and deterrent purposes of the statutes. ''By making it more difficult for employers to defeat successful plaintiffs'' claims to retroactive relief, the higher standard of proof may well discourage unlawful conduct by employers. . . . In addition, the higher standard of proof is justified by the consideration that the employer is a wrongdoer whose unlawful conduct has made it difficult for the plaintiff to show what would have occurred in the absence of that conduct.'' *Toney* v. *Block*, 705 F.2d 1364,1373 (D.C. Cir. 1983) (Tamm, J., concurring); see also Teamsters, 341 U.S. at 359 n.45, 372.

Thus, agencies are required to show by clear and convincing evidence that any class member is not entitled to relief, as is provided currently in sections 1614.501(b) and (c). To be presumptively entitled to relief, the class member first must have filed a written claim pursuant to section 1614.204(l)(3) making a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that the discriminatory action took place within the period of time for which class-wide discrimination was found. To reflect the administrative judge's new role and to provide a procedure for resolving issues related to individual relief, the Commission additionally has revised section 1614.204(l)(3) to state that the administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member.

In response to a comment, we have clarified that the agency or the Commission may find classwide discrimination, and provide a remedy, for any policy or practice in existence within 45 days of the class agent's initial contact with the counselor. We also note, as we stated when Part 1614 was promulgated in 1992, that the 45-day time limit in section 204(l)(3) defining the period for which class-wide discrimination can be found is not intended to limit the two-year time period for which back pay can be recovered by a class member. See 57 FR 12634, 12644 (April 10, 1992); 29 CFR 1614.204(l)(3). Under the continuing violation theory, moreover, incidents occurring earlier than 45 days before contact with the counselor must also be remedied provided that the initial contact with the counselor was timely and the earlier incidents were part of the same continuing policy or practice found to have been discriminatory. That is, where contact with the counselor is timely as to one of the events comprising the continuing violation, then the counseling contact is timely as to the entire violation.

Appeals

In the proposed rule, the Commission proposed two different appeal briefing schedules, depending on the matter

being appealed: 30 days to file both a notice of appeal and any statement or brief in support of the appeal from a dismissal (a ''procedural'' appeal); and 30 days to file a notice of appeal and an additional 30 days thereafter to file a brief or statement in support of an appeal from a final decision (a ''merits'' appeal). Those who commented on this section were nearly unanimous that this distinction was confusing and that there should be a single briefing schedule. The Commission has revised the regulation to provide that a complainant must file an appeal within 30 days of receipt of the agency dismissal or final action, and any supporting statement or brief shall be filed within 30 days of the filing of the notice of appeal. In cases where there has been a decision by an administrative judge, agencies must take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. If the final order does not fully implement the administrative judge's decision, agencies must simultaneously file an appeal with the EEOC. They have an additional 20 days to file a brief in support of that appeal. The final regulation also provides that briefs or statements in support of an appeal and papers filed in opposition to an appeal can be filed by facsimile, provided that they are no more than 10 pages in length. Briefs and statements longer than 10 pages must be mailed or delivered in person.

In response to the Commission's statement in the NPRM that the Commission will strictly apply appellate time frames, a number of commenters suggested that provision be made for extending the appellate time limits for good cause shown. Part 1614 already provides that regulatory time limits ''are subject to waiver, estoppel and equitable tolling.'' 29 CFR § 1614.604(c).

Most commenters agreed with the Commission's proposal that the Office of Federal Operations be empowered to impose sanctions or otherwise take appropriate action regarding any party who fails, without good cause shown, to comply with appellate procedures or to respond fully and timely to a Commission request for information. Some commenters were concerned that this provision could unfairly impact unrepresented complainants. To the extent an unrepresented complainant fails to comply due to mistake, lack of knowledge, or misunderstanding, the Commission will take such factors into consideration when determining whether good cause has been shown.

Most commenters also agreed with the proposed appellate standards of review —factual findings rendered by administrative judges after a hearing will be subject to a substantial evidence standard of review; all other decisions will be subject to a de novo review. No new evidence will be considered on appeal unless the evidence was not reasonably available during the hearing process. As we noted in the preamble to the proposed rule, the substantial evidence standard does not preclude meaningful review of factual findings. Moreover, applying the de novo standard of review to the factual findings in administrative judges' final decisions after hearings would be an inefficient use of EEOC's limited resources.

Finally, the Commission proposed to revise the reconsideration process to approximate the process used by the MSPB, reallocate some resources to the improvement of the appellate process and discourage automatic requests for reconsideration whenever a party loses on appeal. Parties may still request reconsideration but it will only be granted, in the discretion of the Commission, if the requester has demonstrated that the appellate decision involved a clearly erroneous interpretation of material fact or law, or the appellate decision will have a substantial impact on the policies, practices or operations of the agency. The comments received were mixed. The unfavorable comments were mostly from agencies although many other agencies favored the change. The objectors raised the same objections discussed in the preamble to the proposed rule. After considering all comments, we have decided to adopt the proposed rule without change. The proposal makes the reconsideration procedure available for those cases where the requestor demonstrates that there are errors of fact or law that would affect the outcomes of the cases and for those cases that will have a substantial impact. By preserving the Commission's discretion, it also will allow the Commission to reallocate its resources to the improvement of the appellate process.

Attorney's Fees

In its NPRM, the Commission proposed two changes to the attorney's fees regulatory scheme: administrative judges would be authorized to determine the amount of the fee award, not just entitlement to the award; and attorney's fees and costs would be available to prevailing complainants for services rendered prior to the filing of the formal complaint (*e.g.*, during the counseling and ADR phases). Most commenters were in favor of the former change. Comments were split on the latter change; agencies were opposed and plaintiffs' attorneys and employees were in favor of the proposal.

The commenters opposed to an administrative judge determining the amount of attorney's fees and costs to be awarded generally were concerned that an administrative judge would not be able to assess adequately the reasonableness of the time spent by an attorney working on the complaint prior to the hearing. The Commission believes that an administrative judge is in a comparable position to a federal district court judge in making a determination of attorney's fees. To address this concern, though, the Commission has clarified section 1614.501(e)(2) to provide that, when a decision-making authority, that is, an agency, an administrative judge, or the Commission, determines that a complainant is entitled to an award of attorney's fees and costs, the complainant's attorney shall submit a statement of fees and costs to the decision-making authority. The agency may respond to and comment on the statement of fees and costs. The decision-making authority will then determine the amount of fees and costs to be awarded. The Commission believes this procedure will best facilitate the determination of the amount of attorney's fees and costs to be awarded, once an entitlement to a fee award has been determined. The Commission has also updated the discussion in the regulation on calculating fees. Management Directive 110 will contain additional guidance on attorney's fees.

The Commission received many comments on the second change to the attorney's fees provisions, allowing fees for services rendered prior to the formal complaint filing. Agencies expressed significant concern about the proposal, arguing that the change would render the preliminary complaint processing phase more formal and adversarial. The decision was made to provide that agencies are not required to pay for attorney's fees for services rendered during the pre-complaint process unless an administrative judge issues a decision finding discrimination, the agency issues a final order disagreeing with the finding, and EEOC upholds the administrative judge's finding on appeal. In addition, the agency and the complainant can agree that the agency will pay attorney's fees for pre-complaint process representation. These changes were made to preserve the incentive to resolve matters during the

pre-complaint process and, at the same time, to create the incentive for agencies to accept administrative judges' decisions, unless they are clearly erroneous.

Matters of General Applicability

The Commission proposed to amend section 1614.103(b) of the regulations to include the Public Health Service Commissioned Corps and the National Oceanic and Atmospheric Administration Commissioned Corps in the coverage of part 1614. As we noted in the preamble to the NPRM, we intended these changes to clarify coverage of these employees and be consistent with the determination of the Solicitor General, in connection with litigation, that Commissioned Corps members are covered by federal sector anti-discrimination statutes. Congress amended the Public Health Service Act, however, in Public Law 103–183, and, as a result, we have decided not to finalize the amendment to section 1614.103(b) adding the Public Health Service Commissioned Corps. We are making final the inclusion of the National Oceanic and Atmospheric Administration Commissioned Corps. In the final rule, the Commission is also amending section 1614.103(b) to make the regulation consistent with the changes made to section 717(a) by the Congressional Accountability Act of 1995, Pub. L. 104–1, § 201(c), 109 Stat. 8, and the Workforce Investment Act of 1998, Pub. L. 105–220, § 341(a), 112 Stat. 936, 1092. These Acts amended the scope of coverage of section 717, eliminating the legislative branch and adding several agencies. We are amending section 1614.103(b) to remove the legislative branch from coverage and to add the Government Printing Office and the Smithsonian Institution to Part 1614 coverage.

Some commenters suggested that the Commission adopt its private sector charge prioritization procedures in whole or in part in the federal sector. We are making one change to the regulation related to those comments. The current regulation requires a full and fair investigation of every complaint that is not dismissed. Some have interpreted it to require the same amount of investigative effort in each case. That interpretation is not reasonable or desirable and is inconsistent with EEOC's private sector charge prioritization procedures. The Commission believes that the proper scope of an investigation should be dictated by the facts at issue and that a cookie-cutter, one-size-fits-all approach wastes resources and needlessly delays resolution of that complaint and all other complaints. The investigation and the amount of effort expended should be appropriate to determine the issues raised by the complaint. To remedy the misconception that more is required, we have revised sections 1614.106(e)(2) and 1614.108(b) to remove the word ''complete'' and replace with ''appropriate.'' An appropriate investigation is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

Based on comments the Commission received pertaining to the administrative EEO process in general, the Commission has decided to fine-tune certain sections. In section 1614.604, which pertains to methods of filing and the computation of time limits, the Commission is replacing the phrase ''delivered in person'' with the word ''received.'' This change is intended to ensure that a document will be deemed timely if it is received on or before the applicable due date regardless of the manner in which it is transmitted or delivered.

Section 1614.605(d), pertaining to service of papers and computation of time when a complainant has a representative, has been modified. Under the current language, if a complainant is represented by an attorney, correspondence is to be served only on the attorney. The section has been revised to require all papers to be served on both the attorney and the complainant. Dual notification currently is required under section 1614.605(d) if the representative is a non-attorney. For reasons of consistency, the same service rules will apply regardless of the status of the representative. Timeframes for receipt of materials shall be computed, however, from the time of receipt by the attorney where the representative is an attorney.

Regulatory Procedures

Executive Order 12866

In promulgating this final rule, the Commission has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has been designated as a significant regulation and reviewed by OMB consistent with the Executive Order.

Regulatory Flexibility Act

In addition, the Commission certifies under 5 U.S.C. § 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies and departments of the federal government. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination.

For the Commission.

Ida L. Castro,

Chairwoman.

Accordingly, for the reasons set forth in the preamble, chapter XIV of title 29 of the Code of Federal Regulations is amended as follows:

PART 1614—[AMENDED]

1. The authority citation for 29 CFR part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

2. Section 1614.102 is amended by redesignating paragraphs (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7), by adding paragraph (b)(2) and by revising paragraph (c)(5) to read as follows:

§ 1614.102 Agency program.

* * * * *

(b) * * *

(2) Establish or make available an alternative dispute resolution program. Such program must be available for both the pre-complaint process and the formal complaint process.

* * * * *

(c) * * *

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

* * * * *

3. Section 1614.103 is amended by removing the word ''and'' at the end of paragraph (b)(3), revising paragraph (b)(4), and adding paragraphs (b)(5) through (b)(7) to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

* * * * *

(b) * * *

(4) All units of the judicial branch of the Federal government having positions in the competitive service, except for complaints under the Rehabilitation Act;

(5) The National Oceanic and Atmospheric Administration Commissioned Corps;

(6) The Government Printing Office; and

(7) The Smithsonian Institution.

* * * * *

4. Section 1614.105 is amended by redesignating paragraph (b) as paragraph (b)(1), revising the first sentence of redesignated paragraph (b)(1), adding paragraph (b)(2), revising the first sentence of paragraph (d) and revising paragraph (f) to read as follows:

§ 1614.105 Pre-complaint processing.

* * * * *

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the agency in accordance with § 1614.108(f), election rights pursuant to §§ 1614.301 and 1614.302, the right to file a notice of intent to sue pursuant to § 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the agency. * * *

(2) Counselors shall advise aggrieved persons that, where the agency agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

* * * * *

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling.* * *

* * * * *

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

* * * * *

5. Section 1614.106 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising redesignated paragraph (e) to read as follows:

§ 1614.106 Individual complaints.

* * * * *

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The agency shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The agency shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The agency is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the agency shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

6. Section 1614.107 is amended by redesignating paragraphs (a) through (h) as paragraphs (a)(1) through (a)(8), redesignating the introductory text as paragraph (a) introductory text and revising it, removing the word ''or'' at the end of redesignated paragraph (a)(7), revising redesignated paragraph (a)(8) and adding new paragraphs (a)(9) and (b) to read as follows:

§ 1614.107 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint:

* * * * *

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the agency, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes or overburdening the EEO complaint system.

(b) Where the agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the agency shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

7. Section 1614.108 is amended by removing the first sentence of paragraph (b) and adding two sentences in its place, revising paragraph (f) and adding a new paragraph (g) to read as follows:

§ 1614.108 Investigation of complaints.

* * * * *

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. * * *

* * * * *

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the

complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 1614.110 from the agency with which the complaint was filed.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the agency EEO office. Within 15 days of receipt of the request for a hearing, the agency shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

8. Section 1614.109 is amended by revising paragraph (a), redesignating paragraphs (b) through (g) as paragraphs (d) through (i), adding new paragraphs (b) and (c), removing the introductory text of redesignated paragraph (f) and adding a heading, adding a sentence at the end of redesignated paragraph (f)(1), revising the introductory text of redesignated paragraph (f)(3), in the heading of redesignated paragraph (g) removing the words ''Findings and conclusions'' and adding, in their place the word ''Decisions'', in redesignated paragraphs (g)(2) and (g)(3) removing the phrases ''findings and conclusions'' and adding, in their place, the words ''a decision'', and revising redesignated paragraph (i) to read as follows:

§ 1614.109 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to § 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the agency may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the agency may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The agency's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision, or the Commission decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, an agency may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

* * * * *

(f) *Procedures.*

(1) * * * The administrative judge shall serve all orders to produce evidence on both parties.

* * * * *

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

* * * * *

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the agency. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If an agency does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with 1614.110, then the decision of the administrative judge shall become the final action of the agency.

9. Section 1614.110 is revised to read as follows:

§ 1614.110 Final action by agencies.

(a) *Final action by an agency following a decision by an administrative judge.* When an administrative judge has issued a decision under § 1614.109(b), (g) or (i), the agency shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the agency will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with § 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by an agency in all other circumstances.* When an agency dismisses an entire complaint under § 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under § 1614.108(f), the agency shall take final action by issuing a final decision. The final decision shall consist of findings by the agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found,

appropriate remedies and relief in accordance with subpart E of this part. The agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the final action.

§ 1614.201 [Amended]

10. Section 1614.201 is amended by removing the words ''Federal Sector Programs, 1801 L St., NW., Washington, DC 20507'' in the second sentence of paragraph (a) and adding the words ''at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile'' in their place, removing the words ''issued a final decision'' in paragraph (c)(1) and adding the words ''taken final action'' in their place and removing the words ''the issuance of a final decision'' in paragraph (c)(2) and adding the words ''final action'' in their place.

11. Section 1614.204 is amended by revising paragraph (b), removing the words ''recommend that the agency'' from paragraphs (d)(2), (d)(3), (d)(4), and (d)(5), removing the word ''recommend'' and adding the word ''decide'' in its place in paragraph (d)(6), revising paragraphs (d)(7), (e)(1), (g)(2), (g)(4), and (l)(3), and removing the word ''agency'' and adding the word ''agent'' in its place in paragraph (j)(7), to read as follows:

§ 1614.204 Class complaints.

* * * * *

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 1614.105. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 1614.105, no additional counseling is required. The administrative judge shall deny class certification when the complainant has unduly delayed in moving for certification.

* * * * *

(d) * * *

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the agency and the agent. The agency shall take final action by issuing a final order within 40 days of receipt of the hearing record and administrative judge's decision. The final order shall notify the agent whether or not the agency will implement the decision of the administrative judge. If the final order does not implement the decision of the administrative judge, the agency shall simultaneously appeal the administrative judge's decision in accordance with § 1614.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart A or that the complaint is also dismissed as an individual complaint in accordance with § 1614.107. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) * * * (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the agency shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

* * * * *

(g) * * *

(2) The complaint may be resolved by agreement of the agency and the agent at any time pursuant to the notice and approval procedure contained in paragraph (g)(4) of this section.

* * * * *

(4) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by the agency and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

* * * * *

(l) * * *

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the head of the agency or its EEO Director within 30 days of receipt of notification by the agency of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the agency found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The agency or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. The agency shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with

subpart D of this part and the applicable time limits.

§ 1614.302 [Amended]

12. Section 1614.302 is amended by removing the words ''5 CFR 1201.154(a)'' in paragraph (d)(1)(i) and adding the words ''5 CFR 1201.154(b)(2)'' in their place.

13. Section 1614.401 is amended by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), revising paragraph (a), adding a new paragraph (b), and revising redesignated paragraph (c) to read as follows:

§ 1614.401 Appeals to the Commission.

(a) A complainant may appeal an agency's final action or dismissal of a complaint.

(b) An agency may appeal as provided in § 1614.110(a).

(c) A class agent or an agency may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or an agency may appeal a final decision on a petition pursuant to § 1614.204(g)(4).

* * * * *

14. Section 1614.402 is amended by revising paragraph (a) to read as follows:

§ 1614.402 Time for appeals to the Commission.

(a) Appeals described in § 1614.401(a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 1614.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the EEO Director of alleged noncompliance with a settlement agreement in accordance with § 1614.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of an agency's determination.

* * * * *

15. Section 1614.403 is revised to read as follows:

§ 1614.403 How to appeal.

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be submitted to the Office of Federal Operations within 20 days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The agency must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

16. Section 1614.404 is amended by adding a new paragraph (c) to read as follows:

§ 1614.404 Appellate procedure.

* * * * *

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

17. Section 1614.405 is amended by revising the third sentence of paragraph (a), by removing the words ''certified mail, return receipt requested'' from the last sentence of paragraph (a) and adding the words ''first class mail'' in their place and revising paragraph (b) to read as follows:

§ 1614.405 Decisions on appeals.

(a) * * * The decision on an appeal from an agency's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review. * * *

(b) A decision issued under paragraph (a) of this section is final within the meaning of § 1614.407 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the agency.

§ 1614.407 [Removed]

§§ 1614.408 through 1614.410 [Redesignated as §§ 1614.407 through 1614.409]

18. Section 1614.407 is removed and §§ 1614.408 through 1614.410 are redesignated as §§ 1614.407 through 1614.409.

19. Redesignated § 1614.407 is amended by removing the words ''final decision'' from paragraph (a) and adding the words ''final action'' in their place and by removing the words ''a final decision has not been issued'' from paragraph (b) and adding the words ''final action has not been taken'' in their place.

20. Section 1614.501 is amended by revising the last sentence of the introductory text of paragraph (e)(1), and revising paragraphs (e)(1)(iv) and (e)(2)(i), the first sentence of paragraph (e)(2)(ii)(A) and paragraph (e)(2)(ii)(B) to read as follows:

§ 1614.501 Remedies and relief.

* * * * *

(e) *Attorney's fees or costs*—(1) * * * In a decision or final action, the agency, administrative judge, or Commission may award the applicant or employee

reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

* * * * *

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Agencies are not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after an agency takes final action by not implementing an administrative judge's decision. Written submissions to the agency that are signed by the representative shall be deemed to constitute notice of representation.

(2) * * * (i) When the agency, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the agency or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the agency. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The agency may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any agency response shall be made a part of the complaint file.

(ii)(A) The agency or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. * * *

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency.

* * * * *

21. Section 1614.502 is amended by revising the first sentence of paragraph (a), revising the introductory text of paragraph (b), revising paragraph (b)(2) and adding a new paragraph (b)(3) to read as follows:

§ 1614.502 Compliance with final Commission decisions.

(a) Relief ordered in a final Commission decision is mandatory and binding on the agency except as provided in this section. * * *

(b) Notwithstanding paragraph (a) of this section, when the agency requests reconsideration and the case involves removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the agency shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the agency request for reconsideration.

* * * * *

(2) When the agency requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the agency delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the agency to make the payment, then the agency shall pay interest from the date of the original appellate decision until payment is made.

(3) The agency shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the agency to provide notification will result in the dismissal of the agency's request.

* * * * *

§ 1614.504 [Amended]

22. Section 1614.504 is amended by removing the words ''final decisions'' from the section heading and adding the words ''final action'' in their place, removing the words ''A final decision'' from the second sentence of paragraph (a) and adding the words ''Final action'' in their place, and removing the word ''final'' from the third sentence of paragraph (a) and the second sentence of paragraph (b).

23. Section 1614.505 is added to subpart E to read as follows:

§ 1614.505 Interim relief.

(a)(1) When the agency appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the administrative judge's decision orders retroactive restoration, the agency shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the agency appeal. The employee may decline the offer of interim relief.

(2) Service under the temporary or conditional restoration provisions of paragraph (a)(1) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the Commission upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the Commission reverses the decision on appeal.

(3) When the agency appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the agency delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the agency to make the payment, then the agency shall pay interest from the date of the original decision until payment is made.

(4) The agency shall notify the Commission and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the agency to provide notification will result in the dismissal of the agency's appeal.

(5) The agency may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

(b) If the agency files an appeal and has not provided required interim relief, the complainant may request dismissal

of the agency's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the agency's appeal. A copy of the request must be served on the agency at the same time it is filed with EEOC. The agency may respond with evidence and argument to the complainant's request to dismiss within 15 days of the date of service of the request.

§ 1614.603 [Amended]

24. Section 1614.603 is amended by removing the word ''allegations'' from the last sentence and adding the word ''claims'' in its place.

§ 1614.604 [Amended]

25. Section 1614.604 is amended by removing the words ''delivered in person'' and adding the word ''received'' in their place in paragraph (b).

26. Section 1614.605 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 1614.605 Representation and official time.

* * * * *

(d) * * * When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. * * *

* * * * *

27. Section 1614.606 is revised to read as follows:

§ 1614.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the agency for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

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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.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

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430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
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45 Parts:			
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500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
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46 Parts:			
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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, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[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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